Jihočeská univerzita
v Českých Budějovicích
University of South Bohemia
in České Budějovice

Business Law II

Jihočeská univerzita v Českých Budějovicích
Branišovská 1645/31a
370 05 České Budějovice
IČ: 60076658

EVROPSKÁ UNIE
Evropské strukturální a investiční fondy
Operační program Výzkum, vývoj a vzdělávání

MINISTERSTVO ŠKOLSTVÍ, MLÁDEŽE A TĚLOVÝCHOVY

TABLE OF CONTENTS

1 CIVIL PROCEDURE (CIVIL PROCESS)

Substantive law governs the rights and obligations of the participants, whereas procedural law deals with the status and relations of the participants in the event of a dispute. The civil process is, therefore, a set of legal relations arising from the provision of protection, in particular, to private legal relations. These procedural relationships differ from the substantive legal relationships by their binding force and enforceability. The procedural entities comprise the court and the parties to the proceedings. These entities may influence the course of the procedure by their actions. The civil procedure is one of the most extensive branches of law in the Czech legal system.

1.1 Civil Process Types

1.1.1 Discovery Procedure

The discovery procedure leads to a decision, by which the court either ascertains what the law is or creates the law. In history, legal discovery consisted in setting precedents. In the discovery procedure, the court issues an authoritarian decision, which can normally be executed through the execution procedure. We can divide the discovery procedure into contentious and non-contentious.

The purpose of **the contentious procedure** is to ensure protection of the violated or endangered subjective right guaranteed by the substantive regulation. As a rule, in the contentious procedure, declaratory decisions are issued, in which the court declares what the law is and **corrects the illegal situation**. In the contentious procedure, the plaintiff and the defendant stand against each other; the court directs the procedure and decides between these parties.

Non-contentious procedure is, for example, the procedure concerning succession, or the custody of a child to one of his/her parents. The essential feature of the non-contentious procedure is that it is not a plaintiff and defendant as opponents, but the number of parties can be very diverse. The court does not have the role of a mere arbitrator here, but the court itself must act in such a way as to fulfil the public interest. The court issues constitutive decisions in non-contentious procedures.

1.1.2 Enforcement Procedure (Execution Procedure)

The enforcement procedure monitors the implementation of what was found legitimate in the discovery procedure and when voluntary fulfilment did not occur. The obligation is enforced by means of compelling means of state authority or at least under its control. However, it cannot be seen as a follow-up to the discovery procedure as some decisions do not anticipate forced execution (mostly constitutive). The decision to initiate the enforcement procedure is normally in the hands of the entitled party.

We distinguish enforcement of decisions by a court under the Code of Civil Procedure and enforcement of decisions by judicial executors under the Execution Code. When enforcing a decision under the Execution Code, the court shall order the execution and assign the executor elected by the entitled party to carry out the execution.

1.1.3 Insolvency Procedure

The purpose of the insolvency procedure is to decide on the debtor's bankruptcy and the resolution of the bankruptcy. It includes elements of both the discovery and enforcement procedure. Its aim is to structure the property relationships among multiple entities and such arrangement is subsequently implemented in the same procedure. Therefore, first of all, the actual existence of insolvency is decided on, with the solution thereof being determined and implemented afterwards. The insolvency procedure is dealt with in detail in one of the following chapters.

1.1.4 Security Procedure

Security procedures include, for example, precautionary measures, conciliation or the provision of evidence. The objective of the security procedure is to reach an amicable settlement of the dispute before the opening of the proceedings in the subject case and to restore the last amicable situation before the infringement of law without any substantive decision on the rights. In the future, it may be decided on the same right in the discovery procedure or execution may take place.

1.1.5 Arbitration Procedure

The arbitration procedure is one of the alternative dispute settlement methods. It is carried out on the basis of an arbitration agreement, withdrawing the jurisdiction of the court and establishing the jurisdiction of the arbitrator. The court has only a supporting and supervisory function here. The arbitration shall result in an arbitration award, which may be executed by the court and shall, in certain cases, also have the possibility to review it. The arbitration procedure is dealt with in detail in one of the following chapters.

1.2 Related Acts

Act No. 99/1963 Coll., Code of Civil Procedure

Act No. 292/2013 Coll., on Special Court Proceedings

Act No. 549/1991 Coll., on Court Fees, as amended

Act No. 120/2001 Coll., the Enforcement Code

Act No. 182/2006 Coll., on Bankruptcy and the Methods of its Settlement (Insolvency Act)

Act No. 216/1994 Coll., on Arbitration and Enforcement of Arbitral Awards

2 INSOLVENCY PROCEDURE

Insolvency is a type of legal proceedings aimed at choosing such a way of settling debts so as to achieve the maximum possible proportional satisfaction of all debtor's creditors. Insolvency is thus an instrument that the debtor can use to reduce and settle its debts and, at the same time, it serves as a tool to pay at least a portion of the creditor's receivables.

2.1 Bankruptcy

Bankruptcy is a situation, in which the debtor has payables to a number of creditors and it is not within its real ability to fulfil them. However, in cases when the debtor is a state, municipalities, public universities, the Czech National Bank, the General Public Health Insurance Company or, for example, political parties and movements at the time of the announced elections, they do not proceed in accordance with the Insolvency Act.

The Insolvency Act, i.e. Act No. 182/2006 Coll., on Bankruptcy and the Methods of its Settlement, recognises three types of bankruptcy, namely insolvency, over-indebtedness and imminent bankruptcy.

A common condition for insolvency and over-indebtedness is the existence of multiple creditors. If the debtor has only one creditor, this is not bankruptcy. In such a case, the creditor must proceed in a way to obtain the execution title and enforces the debt by means of execution.

Insolvency occurs when the debtor has several creditors (at least two) and has monetary obligations more than 30 days overdue and is unable to settle those payables, which occurs when:

- the debtor has ceased payments of a substantial part of its monetary obligations (express statement of the debtor)
- the debtor fails to perform its monetary obligations for more than three months as of the due date
- it is not possible to obtain satisfaction of any of the due monetary receivables against the debtor by enforcement of a decision or execution
- the debtor did not perform its obligation to submit lists of its assets, liabilities and employees imposed upon it by the insolvency court

The insolvency may occur in the case of a natural person - non-entrepreneur, natural person - entrepreneur or a legal entity, i.e. for all categories of debtors.

Over-indebtedness occurs when the debtor has multiple creditors and the total value of its payables exceeds the value of its assets. This is the ratio of all (even undue) payables of the debtor and its assets. The valuation of the debtor's assets shall also include the expected income, the prospect of obtaining of which can be documented contractually or otherwise. Over-indebtedness may occur only with a natural person - entrepreneur or a legal entity.

Imminent bankruptcy is a situation where, taking into account all the circumstances, it can be reasonably assumed that the debtor will not be able to fulfil a significant part of their monetary obligations in a proper and timely manner. In such a situation, only the debtor shall be entitled to lodge an application to initiate insolvency procedure. The purpose of such a procedure is to find a more favourable solution to its situation, such as reorganisations.

2.2 Insolvency Application

The insolvency procedure shall be initiated by application. T**he insolvency application may be filed** by the debtor or any of the creditors, which must prove, however, that other persons are also the debtor's creditors. Where the application is filed by the debtor, a list of assets, including receivables, payables and employees, as well as documents proving bankruptcy, shall be attached to the application. Where the application is submitted by a creditor, the relevant circumstances certifying bankruptcy shall be indicated, the amount due and the application for the claim attached.

A debtor who is a legal entity or a natural person - entrepreneur **shall file an insolvency application** without undue delay after the debtor became or should have become aware of the bankruptcy in exerting due care and diligence. If the insolvency application is not submitted by such a person in due time, the person shall be liable for the damage incurred.

The applicant may withdraw the application pending the insolvency decision and may re-apply for the same receivable within six months as of the date of withdrawal. The court may, after the application is filed, impose an obligation on the applicant to deposit an advance for costs in the maximum amount of CZK 50,000, if this is necessary to cover the costs of the procedure and the funds cannot be provided otherwise.

2.3 Insolvency Procedure Initiation

The insolvency procedure shall be initiated as soon as the insolvency application has been lodged with the competent court. The court shall announce the procedure initiation in a decree to be published no later than 2 hours after receipt or no later than two hours after the start of business hours on the next business day and shall also notify the state institutions specified in the law (e.g. tax authority, customs office, labour office, etc.).

Following the publication of a decree in the insolvency register, it is no longer possible to successfully bring an action for the receivables to be registered, to perform an execution or to exercise the right to deductions from wage or other income based on an agreement between the creditor and the debtor. At the same time, the debtor's right to dispose of property shall be restricted.

The parties to the procedure shall be the debtor and the creditors exercising their right towards the debtor.

The latest possibility for entrepreneurs to reverse the adverse consequences of insolvency even after the insolvency procedure is initiated **comprises declaring of moratorium**. The purpose of this institute is to give the debtor the opportunity to settle with the creditors before the entire insolvency procedure takes place.

The debtor's application for a moratorium shall contain the documents required and proof of the consent by the majority of the creditors. If the debtor fulfils the conditions as laid down, the court shall immediately declare the moratorium, which shall be published in the insolvency register. The effect of the declaration of moratorium comprises, in particular, the impossibility of issuing the insolvency decision. The effects associated with the insolvency procedure initiation shall remain valid, i.e. the beneficiaries may accede to the procedure and creditors may exercise their rights under an application.

The moratorium lasts for the period, for which it was declared, but not longer than 3 months. A decision to cancel the moratorium may be taken on the basis of a judgement of the court or of a proposal of a majority of creditors, for example, where the debtor has given false information in the application or declared the moratorium with an unfair intent.

The insolvency procedure is further divided into three stages, namely:

- the bankruptcy procedure, where it is decided whether the debtor is bankrupt
- the procedure concerning the way, in which bankruptcy is resolved, how the identified bankruptcy of the debtor will be dealt with, which must be decided by the court within 3 months as of the bankruptcy declaration
- the stage of the chosen method of bankruptcy settlement, i.e. bankruptcy procedure, reorganisation or discharge from debts

2.4 Insolvency Decision

In the absence of a moratorium, the court must, within several days, take actions leading to the insolvency decision. If the application does not meet the necessary requirements, it is incomprehensible, vague or evidently unfounded, the court may decide to **reject the application**. The court shall decide on the **rejection of the application** if bankruptcy is not proved or if the other conditions for the insolvency decision are not fulfilled. If the court finds that the debtor is bankrupt or bankruptcy is threatening, it **shall issue the insolvency decision** to comply with the insolvency application. The decision shall be delivered to the debtor, the insolvency administrator, the receiver, the applicant and the persons who have acceded to the procedure, including the institutions referred to in the law. The insolvency decision contains a statement on the insolvency identification, the provisions of the insolvency administrator, calls on creditors to register their receivables and the place and date of the review proceedings.

Creditors' receivables must be applied by the receivable application using the required form. Creditors shall file their applications with the court from the insolvency procedure initiation and within 2 months as of the insolvency decision. Where applications are submitted late, they shall not be taken into account and shall not be satisfied in the insolvency procedure.

A receivable which was not due as of the date of the application, a receivable that is subject to ongoing court proceedings, or a receivable which has already been granted by a final court decision or for which execution is pending, may also be filed. Where the actual amount of the receivable is less than 50% of the amount applied, the receivable applied shall be disregarded and, in addition, the insolvency court may impose the amount to be paid up to the amount of the difference. The risk can be avoided by the creditor who is not sure of the amount of its receivable is not exercising its rights until the amount of the receivable is established.

The purpose of the review procedure is that only those receivables which were validly incurred by creditors should be registered. The insolvency administrator must check whether the applied creditors' receivables are not defective or incomplete and establish a list of applications. The list of applications shall be published by the insolvency court in the insolvency register no later than 15 days before the review procedure. The insolvency administrator, debtor and registered creditors may deny the legitimacy, amount and order of the registered receivables. The insolvency administrator and the debtor may deny the receivable no later than during the review procedure, and the creditor may do so no later than three business days before the date of the review procedure.

There are several types of creditors' receivables:

Receivables of secured creditors are claims secured by assets belonging to the assets, e.g. by a lien or a right of retention. These receivables shall be satisfied primarily from the proceeds of the sale of a thing or of a right. If the proceeds are insufficient to satisfy the creditors, such creditors shall participate in the rest of the scheme as disadvantaged creditors.

Receivables behind the estate only arise after the insolvency procedure initiation and arise as a result of the existence of the procedure. This includes, for example, reimbursement of necessary expenses, remuneration of the preliminary administrator, insolvency administrator, liquidator, members of the creditor committee, experts, costs related to the maintenance and management of the assets, taxes, fees, etc.

Receivables placed on an equal level as the receivables behind the estate are satisfied in full at any time after the insolvency decision. These include, for example, alimony, compensation for damage to health or labour-law claims of employees.

The receivables excluded from satisfaction in the insolvency procedure are not taken into account in the scheme, but this does not mean that they have ceased to exist. At the end of the insolvency procedure, normal legal remedies may be applied. These mainly include receivables of a secondary nature, such as interest, interest on late payment[1], contractual penalties, claims from donation contracts, financial penalties, fines, administrative penalties, etc.

Subordinate receivables shall be satisfied only after all other receivables have been satisfied.

The estate means the assets, which belonged to the debtor as of the date of the insolvency procedure initiation, as well as assets acquired by the debtor in the course of the procedure. The insolvency court shall establish the debtor's estate, make an inventory of the assets and have the assets valued. The debtor shall cooperate with the court. If someone disagrees with the inclusion of their assets in the estate, they shall bring an exclusion action within 30 days. Should they fail to do so, they are deemed to have been included correctly.

2.5 Decision on Bankruptcy Settlement

The insolvency court may decide to settle bankruptcy together with the insolvency decision, but no later than three months as of the insolvency decision. The objective is the arrangement of property relationships with persons affected by the debtor's bankruptcy and the proportionate satisfaction of creditors.

The group of the debtor's creditors may be relatively broad and variable, as their claims are lodged throughout the procedure. On the contrary, some creditors leave in the course of the procedure, because their claim was denied or satisfied in the course of the procedure. Due to the fragmentation of their interests, it would be very difficult to deal with individual creditors on an individual basis, and therefore, special procedural entities are created - the creditor body - which are the creditors' meetings, the creditor's committee and, where appropriate, the creditors' representatives. The purpose of the creditors' bodies is to represent the interests of the majority of creditors at a meeting of creditors to be held after the review procedure. Their powers consist in the exercise of powers, such as consent or expression of opinion of various procedural acts or in supervision over the activities of the insolvency administrator.

2.6 Liquidation Methods of Bankruptcy Settlement

In the case of liquidation bankruptcy settlement, i.e. bankruptcy procedure, the insolvent party is

[1] *If they increased and/or became due at the time of the insolvency decision.*

excluded from economic activities.

The substance of bankruptcy is the proportionate satisfaction of the secured receivables from the proceeds of the estate. The insolvency administrator shall decide on the manner, in which the estate will be sold. It may be a public auction, a sale of movable property and real estate according to the Code of Civil Procedure or a sale outside the auction, i.e. on the basis of a purchase agreement between the administrator and the buyer. A special arrangement is for monetisation of a debtor undertaking, which is carried out contractually and only with the consent of the court and the creditors' committee.

At the end of the monetisation, the insolvency administrator shall submit the final report to the court together with the billing of its remuneration and expenses, which the court shall order to deal with. According to the results of the final report, **the "scheme"** is implemented, i.e. the determination of the maximum amount of satisfaction of receivables of each of the debtor's creditors. The draft scheme resolution shall be prepared by the insolvency administrator and shall be decided by the court.

Bankruptcy procedure ends with a resolution on its annulment. By cancelling the bankruptcy procedure, the effects of its declaration shall cease and the debtor may again dispose of its remaining assets. If the debtor is a legal entity, the statutory bodies or liquidator shall act on its behalf again. The legal identity of the debtors shall not cease by closing the bankruptcy procedure, but if the bankruptcy procedure is cancelled due to a lack of assets, the cancellation of the bankruptcy procedure constitutes the basis for deletion from the Commercial Register.

The receivables not satisfied in the bankruptcy procedure do not cease to exist and the creditors can recover them separately again, while the list of receivables in the review procedure protocol is a writ of execution for 10 years.

Liquidation of bankruptcy as a form of settlement also includes **minor bankruptcy** procedure, which is a simplified form of bankruptcy procedure, concerning natural persons who are not entrepreneurs and entrepreneurs whose turnover for the accounting fiscal year did not exceed CZK 2 million and do not have more than 50 employees.

The bankruptcy of financial institutions is also dealt with in a special manner. Financial institutions are excluded from the scope of the Insolvency Act for as long as they hold licenses or permits under a special regulation. Such proceedings, and a number of particularities and deviations from the standard course of bankruptcy, e.g. an insolvency petition, can only be filed by the authorities supervising those institutions. The reason for the special arrangement is the protection of clients of financial institutions, the aim being, in particular, to eliminate the impact of the institution's bankruptcy on clients' deposits and insurance and to maintain the loans granted. If a financial institution loses a licence, bankruptcy can be resolved by liquidation.

2.7 Recovery Methods of Bankruptcy Settlement

When using the recovery methods to deal with bankruptcy, the debtor is not completely excluded from economic activities, which it is usually still allowed to perform. The purpose of the recovery procedures for bankruptcy settlement is, in particular, postponement or other facilitation of the debtor's payments, which results in the fact that creditors often get more than in the case of liquidation. If the recovery method of bankruptcy settlement is chosen and all of the legal requirements are not fulfilled subsequently, the liquidation form of bankruptcy settlement occurs, i.e. bankruptcy.

We distinguish between two methods of recovery of bankruptcy settlement, namely reorganisation and discharge from debts.

Reorganisation may take place only if it is proposed. It may be proposed by the debtor and registered creditor. Reorganisation is only possible in a situation where the debtor is an entrepreneur (a natural person or legal entity) whose total turnover must reach at least CZK 50 million or must employ at least 50 employees. Another possibility is that the debtor, along with the insolvency application or, at the latest, by the insolvency decision, submits to the insolvency court a reorganisation plan adopted by at least half of all secured and half of all unsecured creditors, calculated according to the amount of their receivables. This option is called **a pre-packaged reorganisation**. The court shall decide on the approval of the reorganisation within 3 months as of the insolvency decision. If the reorganisation is not authorised by the court, the insolvency procedure shall continue with the bankruptcy procedure.

Reorganisation relates to the debtor's business or other assets. The operation of the debtor's business is maintained, but is subject to various recovery measures approved by the court, the implementation of which is monitored on an ongoing basis. Long-term reorganisation is a basic form and consists in the gradual and proportionate satisfaction of the debtor's receivables from the company's operations with implementation of the approved recovery measures. The short-term reorganisation consists in one-off measures aimed at restructuring of the company or providing capital benefits (e.g. sale of the company, issue of securities, etc.).

The basic document for carrying out the reorganisation is the reorganisation plan, which contains the method of reorganisation, dividing of creditors into groups, extent to which creditors are satisfied, recovery measures, etc. The reorganisation plan is to be discussed at the creditors' meeting voting in the groups set out in the plan. The reorganisation plan shall be adopted where all groups of creditors have voted for it and the plan shall then be approved by the court.

Reorganisation ends upon the completion of the reorganisation plan confirmed by the court in a special decision. If the entire reorganisation process is completed successfully, it brings advantage to both the debtor's creditors, who are often satisfied to a higher extent than in the event of the liquidation method of bankruptcy settlement, and to the debtor, who leaves the insolvency procedure freed from the obligation to pay the liabilities not satisfied during the reorganisation.

Discharge from debts is the most frequently used instrument of the Insolvency Act. It is applicable for a legal entity that is not considered an entrepreneur by law and at the same time does not have business debts, or for a natural person that does not have business debts. Under certain conditions, discharge from debts is possible also for a person that has business debts.

The proposal for the bankruptcy to be managed by discharge from debts may only be initiated by the debtor and filed along with the insolvency application. If the insolvency application is submitted by another person, the application for permit of discharge from debts shall be filed no later than 30 days as of the delivery of the insolvency application to the debtor.

If the court rejects the application for discharge from debts, it shall also decide that bankruptcy will be resolved by bankruptcy procedure. In the event that the court decides to authorise the discharge from debts, the creditors shall vote on the method of the discharge from debts. Based on the results of the vote, the court shall approve the method of discharge from debts. If the method of discharge from debts is not approved, the bankruptcy is resolved by bankruptcy procedure.

The methods of discharge from debts include monetisation of estate (similarly like in bankruptcy procedure), performance of the payment schedule or performance of the payment schedule with

monetisation of estate.

In the event of discharge from debts by **monetisation of estate**, all movable and immovable assets of the debtor shall be monetised. The insolvency administrator's remuneration and compensation of the cash expenses are deducted from the cash received by the monetisation (the "proceeds"). The resulting amount is then divided among the unsecured creditors.

In the case of discharge from payments **in the form of a re/payment schedule**, the debtor is obliged to make regular payments from their income for a period of five years (in some cases even for a period of only three years). This payment is based on the amount of the debtor's income, amount of the normative housing costs and the minimum subsistence amount. Everything that exceeds this amount after these deductions will constitute the value of instalment.

Fulfilment of the re-payment schedule with monetisation of estate means that the debtor will not only pay regular monthly instalments, but its assets will be sold, as well.

After the discharge from debts has been authorised, the debtor shall engage in an adequate profitable activity and, if unemployed, make efforts to generate income. The values obtained by inheritance, gift, as well as other extraordinary revenues must be issued to the insolvency administrator and used for extraordinary payments beyond the re-payment schedule. Always by 15 March and 15 September of the calendar year, they shall submit to the insolvency court an overview of their income for the past 6 calendar months.

The court may, in the course of the debt waiver, amend its original decision and decide on bankruptcy procedure, for example if the debtor fails to fulfil the essential obligations or if the debtor proves to be pursuing the debt waiver for dishonest reasons, etc. The court shall do so after the action, to which it summons the debtor, the insolvency administrator and the creditor.

If the debtor fulfils all the obligations associated with the approved discharge from debts in a proper and timely manner, the insolvency court shall exempt the debtor from payment of the claims in the amount that has not been satisfied yet. However, this does not apply, for example, to receivables of secured creditors, receivables by virtue of a financial penalty, alimony claims, etc.

If, within three years, the court finds that the debtor has cheated and thus acquired the discharge from debts illegally, it cancels the debtor's discharge, restores the debts and, in the cases provided for by law, decides on bankruptcy procedure.

2.8 Related Acts

Act No. 99/1963 Coll., Code of Civil Procedure

Act No. 182/2006 Coll., on Bankruptcy and the Methods of its Settlement (Insolvency Act)

Act No 26/2000 Coll., on Public Auctions

3 ARBITRATION PROCEDURE

Arbitration is an out-of-court method of dispute settlement by independent and impartial arbitrators, which is used as an alternative to civil process **in the resolution of property disputes**. Sometimes it is also called simply arbitration. The benefits of an arbitration procedure include its speed, lower costs and informality. An arbitrator's decision, which is referred to as the arbitration award, has the character of a court decision and constitutes a full enforcement title.

3.1 Arbitration Agreement

If the parties to the contractual relationship in the event of a dispute wish to exclude the jurisdiction of the court and resolve the disputes through an arbitrator, they may do so by means of an arbitration agreement. The arbitration agreement shall be valid only if it is entered into in writing and can be validly concluded only if the parties have been able to enter into an amicable settlement on the subject matter of the dispute.

The arbitration agreement may take the form of an arbitrator agreement or an arbitration clause. The arbitrator agreement covers an individual dispute that has already arisen. On the other hand, **the arbitration clause** concerns all disputes that may arise in the future from a certain legal relationship established by the contract in which the clause is contained.

In addition to the agreement that disputes will be resolved out of court by arbitration, it is possible to include in the arbitration agreement, for example, arrangements for the appointment of an arbitration panel or arbitrators or review of the arbitration award by other arbitrators.

3.2 Arbitrator

The arbitrator shall organise and manage the entire course of the arbitration procedure. It also conducts evidence, decides on claims and usually issues arbitration awards. The law stipulates that the arbitrators must be odd in number, and therefore the dispute may also be decided by a single arbitrator.

In order for a person to become an arbitrator, they must be an adult, possess clean criminal record and be a legal citizen of the Czech Republic fully competent to make legal acts who, unlike a judge, does not have to have a university education at law. The arbitrator may be a judge or a prosecutor.

The parties to the arbitration may agree to the arbitrators in an arbitration agreement. The arbitration agreement shall, as a general rule, determine the number of arbitrators and/or the manner, in which the number and the arbitrators will be determined in the event of initiation of the arbitration. If this is not determined in advance, each party shall appoint one arbitrator in the event of the initiation of the arbitration procedure, who shall then elect the presiding arbitrator. This can also be done by the court. Acceptance of the function must be done in writing. No one shall have the obligation to accept the function of arbitrator, but, if they do, they may resign only for serious reasons or with the agreement of the parties.

If the arbitrator has any relation to the matter, to the participants or to their representatives, this shall constitute a reason for the exclusion of the arbitrator. In such a case, the court shall appoint a new arbitrator upon request of either party or the arbitrator, unless the parties agree otherwise.

Every arbitrator shall protect the confidentiality of information they become aware of in connection with performing the function of an arbitrator. The arbitrators may be relieved from the obligation of

confidentiality by the parties or the court.

3.3 Permanent Arbitration Courts

Arbitration may also take place before an institutional arbitration court. In the Czech Republic, there are three permanent arbitration courts, namely the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic, the Prague Stock Exchange Arbitration Court and the Arbitration Court of the Czech Moravian Commodity Exchange Kladno. These courts have been established by law and may issue their statutes and regulations, which shall be published in the Trade Journal. These statutes and regulations determine, for example, the rules of arbitration or the number and manner of appointment of arbitrators whose names come from the list of arbitrators held by the competent permanent arbitration court. The parties may also entrust the dispute to international arbitration courts.

The arbitration court shall ensure that the procedure is conducted properly and efficiently, that the file is properly kept and that it is delivered to the parties and, as a general rule, it usually also provides premises and technical background for the negotiations. It also ensures that the arbitrators are elected in a timely manner. It therefore arranges a wide range of administrative matters that the parties and the arbitrators must arrange for themselves in the case of arbitration without an arbitration court.

3.4 Arbitration Procedure

The arbitration procedure shall be initiated on the day when the action is brought to the permanent arbitration court or to the arbitrator. The filing of an action shall have the same legal effects as if an action had been brought in the case before a court, for example, the limitation period shall be interrupted.

The arbitrators shall then examine their own powers and, if they conclude that they do not have the power to decide, they shall decide on this by means of a resolution. A party may object to a lack of competence no later than the time of the first procedural act relating to the substance of the case.

The arbitration procedure shall be held **in a place agreed to by the parties** and, if not specified, in a place determined by the arbitrators, taking into account the legitimate interests of the parties. Unless the parties agree otherwise, the procedure before the arbitrators shall be **oral**. This procedure is always **non-public**.

The arbitrators may only hear witnesses, experts and parties if they **voluntarily** appear and make a deposition. Other evidence may also be provided only if it is provided to them. Procedural acts which cannot be carried out by the arbitrators themselves shall be carried out upon request by the court. The court shall comply with the request. Similarly, the court may, upon request of either party, order an interim measure if it appears that the enforcement of the arbitration award may be jeopardised during or before the arbitration procedure.

3.5 Decision - Arbitration Award or Resolution

The arbitration procedure shall end when **the resolution** is served, for example, when the arbitrators conclude that they do not have the power to decide on the matter. The resolution shall be signed, substantiated and served as an arbitration award.

The arbitration award is a judicial decision, i.e. a decision on the substance of the matter and fully replaces a standard judicial decision. The arbitration award shall be made by the majority of the

arbitrators and in writing. It shall contain an opinion and a statement of reasons, unless the parties agree that there is no need for a statement of reasons.

In the decision-making process, the arbitrator shall follow the substantive law governing the dispute. However, they may decide on the basis of the principles of justice, but only if the parties have expressly instructed them to do so. The arbitrators have the obligation to act on the parties during the proceedings to agree to settle the dispute amicably – conciliation. Upon request of the parties, conciliation may take the form of an arbitration award. Conciliation concluded in the form of an arbitration award shall also contain a statement of reasons, unless the parties agree that there is no need for a statement of reasons.

The written copy of the arbitration award must be delivered to the parties and, upon delivery, a legal force clause must be attached thereto. The arbitration award, which cannot be reviewed or in respect of which the time limit for the submission of the request for review (see below) has expired in vain **shall take effect on the date of service of the final judgement and shall be enforceable in the courts**.

Permanent arbitration courts are obliged, for a period of 20 years as of the date, on which the arbitration award becomes final, to keep the arbitration award, accompanied by a final and binding nature clause and all documents proving the conduct of the arbitration procedure. In the event that the dispute is decided by the arbitrators, they shall submit the arbitration award within 30 days of the legal force of the arbitration award and the other instrument in custody to the district court in whose district the arbitration award was issued. Such district court shall keep the arbitration award for at least 20 years. The parties may inspect the documents and make extracts and copies thereof.

3.6 Review and Cancellation of Arbitration Award

The arbitration award cannot be appealed against, only the arbitration agreement may allow for the review of the arbitration award by other arbitrators. However, such review procedure is only another arbitration procedure. If this possibility of review has not been agreed on, or if the time limit for the submission of the request for review has expired in vain, the arbitration award delivered shall be final.

The arbitration award review by other arbitrators is a part of the arbitration procedure and the provisions of the Arbitration Act shall apply thereto. This shall not apply to errors in text, numbers and other formal errors in the arbitration award that are corrected upon request of the parties.

However, either party may submit **a petition to the court for its annulment** within 3 months of its delivery. In the arbitration award annulment procedure, the court examines only the fulfilment of the conditions for the arbitration procedure and certain issues related to its progress, i.e. not the content thereof.

The filing of an application for revocation of the arbitration award does not have a suspensory effect on the enforceability of the arbitration award, and therefore, the enforcement of a decision or execution may be conducted. However, upon request of the liable party, the court may postpone the arbitration award enforceability if there is a risk of serious harm due to the immediate execution of the arbitration award or if it can be inferred from the annulment request that it is justified.

The arbitration panel may revoke the arbitration award, for example, if it has been delivered in a matter, for which no valid arbitration agreement can be concluded, or if the arbitration agreement is invalid for other reasons. In such cases, the court may continue the proceedings on the substance of the case and decide on the matter if either party proposes to do so within 30 days. **The arbitration procedure may no longer be conducted in such a case.**

In addition, the court may annul the arbitration award in cases, including but not limited to:

- an arbitrator participated in the arbitration procedure who had not been called upon to take decisions or who was not competent be an arbitrator;
- the arbitration award was not adopted by the majority of the arbitrators;
- a party was not given any opportunity to discuss the case before the arbitrators;
- the arbitration award condemns the party for performance that was not legitimately requested.

If the court revokes the arbitration award for any of these reasons, **the arbitration procedure shall continue** on the basis of the arbitration agreement. In the case of the first reason referred to above, the arbitrators concerned shall be excluded from repeated negotiations and decision-making.

3.7 Arbitration Procedure in Consumer Disputes

Since 1 December 2016, the disputes between the consumer and entrepreneur cannot be decided by arbitration and any dispute can only be decisively decided by the competent court.

3.8 Related Acts

Act No. 216/1994 Coll., on Arbitration and Enforcement of Arbitral Awards

Act No. 91/2012 Coll., on Private International Law

Decree No. 74/1959 Coll., on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the so-called New York Convention)

4 CRIMINAL LAW

Criminal law, along with the constitutional and administrative law, belongs to the branches of public law. We make a distinction between substantive and procedural law.

The substantive criminal law specifies what constitutes a criminal offence, the conditions of criminal liability and what penalties may be imposed for a criminal offence. The legal regulation of the substantive criminal law is contained in Act No. 40/2009 Coll., the Criminal Code.

The substantive criminal law requires a procedural component for its enforcement. The procedural criminal law provides for the procedure of law enforcement authorities in the detection of criminal offences, the demonstration of their committing to specific persons and the imposition and enforcement of criminal penalties and protective measures. It also regulates the rights and obligations of the person subject to the criminal proceedings, as well as other persons to whom the proceedings relate. The procedural criminal law is stipulated in Act No. 141/1961 Coll., on Criminal Proceedings, which is also referred to as the Code of Criminal Procedure.

The substantive and procedural criminal law are, therefore, more interconnected than other legal branches. For example, in the case of civil law, the majority of the legal relationships works only on the substantive level without the presence of a procedural component.

4.1 Criminal Offence

A criminal offence is an illegal act characterised by the Criminal Code as criminal and that shows characteristics specified in the Code.

Criminal offences are divided into misdemeanours and felonies. A special category comprises particularly serious felonies. Misdemeanours include all negligent criminal offences and those intentional criminal offences for which the Criminal Code stipulates a sentence of imprisonment with an upper limit of five years. Felonies include all criminal offences that are not classified as misdemeanours under the Criminal Code. Particularly serious felonies are intentional criminal offences for which the Criminal Code stipulates a sentence of imprisonment with the upper limit of at least ten years.

In addition to the division of criminal offences into misdemeanours and felonies, we can divide criminal offences into intentional and negligent offences, as well as disorder and threat criminal offences.

In the case of intentional criminal offences, the offender shall either pursue committing of a delinquent consequence or at least be aware of this happening. In the case **of negligent criminal offences**, it is sufficient that the offender either knows that they can cause a harmful consequence, but expected it not to happen without a reasonable reason, or did not know it, despite the fact that given the circumstances and personal circumstances they should have known it. Unless the Criminal Code expressly states in respect of a particular criminal offence that committing thereof only requires causing it by negligence, intent is required.

Disorder criminal offences are those that directly violate a legitimate interest (the “crime object”) such as theft or rape. On the contrary, **threatening criminal offences** are harmful by creating a dangerous situation without the need for specific harmful consequences, for example, the spreading of a hoax.

The individual bodies of the criminal offences divided into 13 chapters are specified in a separate

section of the Criminal Code. These are crimes against life and health, criminal offences against freedom, criminal offences against human dignity in the sexual sphere, crimes against family and children, crimes against property, economical criminal offences, generally dangerous criminal acts, criminal offences against environment, criminal offences against the Czech Republic, foreign states and international organisations, criminal offences against order in public matters, criminal offences against conscription, military criminal offences, criminal offences against humanity, peace and war crimes. the individual chapters are specified in detail in the following chapter.

4.2 Attributes of The Criminal Offence Body

The criminal offence body is one of the formal attributes of the criminal offence. It is a summary of objective and subjective attributes that determine the individual types of criminal offences and distinguish them from each other. We can divide the body attributes into obligatory and optional. If the act does not have all the obligatory features, the body of the criminal offence is not even given, and therefore, it is not a criminal offence.

The optional attributes of the body of the criminal offence include, for example, the place, the time of the conduct, a certain means of committing, an objective, an incentive or a motive. All bodies may not have the optional attributes, but if a certain body of a criminal offence contains them, this attribute must be fulfilled in order for the body to be fulfilled.

The obligatory attributes of the body include **an object** that indicates what is protected by substantive criminal law in relation to a criminal offence, such as health or property, as well as **an objective aspect**, which is the conduct, consequence and causal link between them. Another group of obligatory attributes is **the subject**, which is the offender. The offender may be a legal entity or a natural person that is sane at the time of the act, has reached the age of 15 and is intelligently and morally mature in the case of a juvenile. **The subjective aspect** is the issue of culpability, i.e. whether the act was committed intentionally or by negligence.

4.3 Conditions Precluding Illegality of an Act

If conditions exist that preclude illegality, they cause an act that otherwise shows the characteristics of a criminal offence to be a criminal offence. Acts in such circumstances are not criminal because they lack illegality. Such actions are not socially harmful.

The Criminal Code lists five conditions precluding illegality, namely extreme necessity, necessary defence, consent of the aggrieved party, admissible risk and authorised use of weapons.

In case of **extreme necessity**, it is averting the imminent danger, i.e. a situation where there is a risk of damage. The condition of application thereof is that the risk cannot be avoided otherwise in the given circumstances and the consequence must not be as serious or even more serious than the one that was at risk.

The necessary defence requires a directly imminent or continuing attack against the interest protected by the Criminal Code. This may be an attack on health, life, other value of personality or property. It is not a necessary defence if the defence was clearly inadequate to the manner of attack.

Consent of the aggrieved party as a condition precluding illegality is taken into account in the case of the individual's interests, which they themselves can decide on and the violation of which does not affect the interest of the society. For example, consent may not be given to bodily injury or death. Consent shall be given before or during the act, provided that it is serious, voluntary, specific and understandable.

Admissible risk may be undertaken, for example, in the interests of technological progress, i.e. the introduction of a new technology or the testing of new products, where interests otherwise protected are exposed to a particular hazard.

The authorised use of weapons is a condition precluding illegality in the case of use of weapons within the limits stipulated by another legal regulation (e.g. the Czech Police Act). Furthermore, the condition precluding illegality include **the indemnity of a police agent** which is expressed as a specific condition precluding illegality in a special part of the Criminal Code.

In addition to these standardised conditions, there are other conditions precluding illegality. In general, we can state that in these cases it is performance of a permitted or ordered activity.

4.4 Sentence Types

A sentence is a legal consequence of a certain infringement, which can only be imposed by a court. A sentence may only be imposed on the offender by law and must be adequate to the criminal offence committed. The type and extent of the sentence must be imposed by the court with regard to the particular circumstances. The sentence should only affect the offender and the impact on their surroundings should be minimal. The Charter of Fundamental Rights and Freedoms of the Czech Republic expresses the principle of humanity of sanctions, which stipulates that it is prohibited to impose cruel and disproportionate sanctions.

The purpose of the sentence is to protect society from the offender of a criminal offence, to prevent the offender from committing other criminal activities, to educate the offender to conduct a good life, and also to educate other members of society.

The Criminal Code defines an exhaustive list of criminal sentences that can be imposed on the offender.[2]

---

[2] *Section 52(1) of the Act No. 40/2009*

"The court may impose the following sentences for committed criminal offences

a) imprisonment

b) house arrest

c) community service

d) forfeiture of property

e) pecuniary penalty

f) forfeiture of a thing

g) prohibition of activity

h) prohibition of keeping and breeding animals

i) prohibition of residence

j) prohibition of attending sport, cultural, or other social events

k) loss of honorary titles and decorations

l) loss of military rank

m) expulsion."

The sentence of imprisonment is a basic and universal punishment that can be imposed for each offence in a special part of the Criminal Code. It is executed in prisons. It is subsidiary in nature, which means that it can only be imposed where it is not sufficient to impose an alternative penalty in order to fulfil the purpose of the sentence. The general maximum period of imprisonment is 20 years. This limit may be exceeded in the event of an exceptional sentence being imposed. Exceptional sentences are sentences of imprisonment over 20 to 30 years and imprisonment for life. Such sentences can be imposed for a particularly serious felony, where the Criminal Code so allows.

Under **house arrest**, the sentenced person shall remain under their duty in a designated place of residence for the duration of their sentence within a specified period of time, unless they are prevented from doing so by important reasons, in particular, employment or job or provision of health care. House arrest is an alternative to a sentence of imprisonment. The court orders it for a misdemeanour for up to two years. It was introduced in 2010 in order to maintain positive family ties and for economic reasons. If the sentence is not executed, the court may convert the sentence or the rest of it into a sentence of imprisonment. Inspection of the execution of the sentence is performed by the probation service in cooperation with the operator of the electronic control system, which may be electronic bracelets or transmitters on a convict's body.

Community service is legal forced labour for the general benefit of a wider range of people, such as maintenance of public places, cleaning and maintenance of public buildings and roads, or other similar activities. The work must not be used for the earning purposes of the convict. The court imposes that sentence for a misdemeanour, taking into account the views of the offender and their state of health. Community service cannot be imposed in addition to the sentence of imprisonment and in addition to house arrest.

Forfeiture of property is the most severe property-affecting sentence. This sentence is imposed by the court for a serious intentional criminal offence committed in order to obtain material benefits. It affects either all property of the offender or a part thereof (e.g. receivable), which is always determined by the court. However, it always applies only to the personal property of the convict. The forfeiture of property shall never apply to articles or things necessary to satisfy the living needs of the convict, or of persons the support and education of which the convict has the obligation to take care of. The assets forfeited belong to the State.

Pecuniary penalty is a basic alternative sentence, which also applies to criminal offences other than those against property. It may be imposed as a separate sentence or in addition to another sentence. It is measured in the form of “daily penalties”. The number of daily rates depends on the seriousness of the criminal offence committed and ranges from 20 to 730 full daily penalties. The amount of daily rates is determined with regard to personal and property conditions of the offender, whereas the minimum amount is CZK 100 and maximum is CZK 50,000. If the amount is obviously not recoverable, the court will not impose that penalty. The amounts paid belong to the State.

The sentence of **forfeiture of a thing** shall be imposed by the court in respect of items, which were used or intended to be used for committing a criminal offence. These may include weapons or instruments and apparatus, which facilitate criminal activity. Furthermore, the sentence of forfeiture may be imposed on things that are the proceeds of crime. The sentence may only be imposed if it concerns a thing belonging to the offender. The forfeited thing belongs to the State.

The sentence of **prohibition of activity** consists in prohibiting the convict to perform certain employment, profession or function or such activity that requires a special permit, or the performance of which is regulated by another legal regulation. This most commonly concerns driving

of motor vehicles due to committing traffic related criminal offences. It is also imposed in connection with employment in a bank, on physicians or officials.

The prohibition of keeping and breeding animals is a form of sentence introduced in connection with the amendment of the Criminal Code of 2020. The sentence of prohibition of keeping and breeding animals is that the convict is prohibited to keep, breed and care for an animal for the duration of this sentence. This is a prohibition to keep and breed all animals, not just a specific mistreated animal or a particular animal species.

The sentence of **prohibition of residence** shall be imposed in addition to other types of punishment, but it may also be imposed separately. The purpose of the sentence of prohibition of residence is to remove the offender from the environment where they were committing criminal activity. This measure is intended to help them not to repeat criminal activity, otherwise the environment could continue having a negative impact on the offender in the future. The sentence of prohibition of residence shall not apply to the place of permanent residence of the offender.

The sentence of **prohibition of attending sport**, cultural and other social events is mainly intended for problematic football fans, as well as other offenders who have committed intentional criminal offence in connection with attending a certain event. The prohibition to attend events consists in the prohibition for the convict to attend events specified by the court. During the execution of the sentence, the convict shall also cooperate with the probationary officer and carry out the specified social training and retraining and psychological counselling programmes.

The loss of honorary titles and decorations means that the convict loses the decorations, honorary titles and artistic honours, and other honorary titles awarded under the national law. International awards were not awarded by the Czech authorities, and therefore, they cannot be withdrawn, but it is possible to impose a prohibition on wearing and using them. Therefore, the offender of intentional criminal offence should receive such sentence only if the criminal offence was committed on a particularly reprehensible basis. This is an “extraneous sentence”, which can only be imposed together with the sentence of imprisonment for a minimum of two years.

Sentence of **loss of military rank** reduces the convict’s rank in the armed forces to the soldier rank. A loss of military rank may be imposed by a court if it condemns the offender for intentional criminal offence committed on a particularly reprehensible basis to an unconditional sentence of imprisonment for a minimum of two years. It is, therefore, also an extraneous punishment.

Expulsion is a sentence that can only affect foreigners, not a citizen of the Czech Republic. It applies to the entire territory of the Czech Republic and its purpose is to prevent offenders from committing further crimes in this territory. The court may impose such a sentence in addition to another sentence or separately. It is imposed for a definite period of time from one year to ten years, but it can also be imposed for an indefinite period of time, i.e. permanently.

4.5 Protective Measures

Protective measures are criminal sanctions, but not a sentence. The imposition, therefore, does not reflect a negative assessment of the offender, and its purpose is, in particular, to protect society from the offenders of criminal offences, as well as to help those affected by a disease to live a proper life. Unlike the standard sentences, it can also be imposed on persons who are not criminally liable.

A protective measure may supplement or substitute a sentence. Therefore, the court may impose a protective measure separately, together with a penalty, or replace the sentence with a protective measure. When imposing protective measures, the seriousness of the criminal offence is taken into

account to a limited extent.

We distinguish between four types of protective measures.

Protective therapy can take place in an institutional or outpatient form and is imposed on dangerous persons who cannot be prosecuted because they are not sane, suffer from a mental disorder or use addictive substances.

Protective detention is applied by the court if the protective therapy in itself would not lead to sufficient protection of the society. It is intended for people who are extremely dangerous, such as psychopathic habitual offenders. It is one of the most extreme instruments of criminal law, because it can be associated with life-long isolation. The court shall, at least once every 12 months (for juveniles every 6 months), examine whether there are grounds for detention.

The subject of the **detention of a thing** is a thing that might be the subject of the sentence of forfeiture of a thing, however, such sentence has not been imposed on the offender. Compared to the sentence of the forfeiture of a thing, the detention of a thing has a subsidiary nature.

Protective education is a measure imposed by a court for the infringement of a juvenile, i.e. a person between 15 and 18 years of age. The main purpose of protective education is to protect society from the danger of committing further offences, as well as to protect the mental, moral and social development of a juvenile.

4.6 Related Acts

Act No. 40/2009 Coll., Criminal Code

Act No. 141/1961 Coll., on Criminal Procedure (Criminal Procedure Code)

Act No. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms

Act No. 218/2003 Coll., Act on Juvenile Criminal Procedure

5 CRIMINAL LIABILITY OF LEGAL ENTITIES

Criminal liability of legal entities is governed by Act No. 418/2011 Coll., on criminal liability of legal entities and proceedings against them. This law contains both substantive and procedural legal provisions. The Criminal Code and the Code of Criminal Procedure shall apply unless otherwise stipulated in the Act on Criminal Liability of Legal Persons unless this is excluded by the nature of the matter.

5.1 Definition of a Criminal Offence Committed by a Legal Entity

An offence committed by a legal entity is an unlawful act **committed on behalf of a legal entity, in its interest or in the course of its business**, if the statutory body or a member of the statutory body has acted in this way, or another person authorised to act on behalf of or for a legal entity, a person in a managerial or control position with regard to that legal entity, a person exercising decisive influence over the management of that legal entity or an employee or a person in a similar position in the performance of work tasks.

The criminal offence must, therefore, be attributable to the legal entity. The criminal liability of a legal entity shall pass to all of its legal successors.

Under the Act on Criminal Liability of Natural Entities, a legal entity may commit a felony or misdemeanour listed in the Criminal Code, with the exception of criminal offences exhaustively listed in Section 7.[3]

5.2 Criminal Offence Types According to the Criminal Code

5.2.1 Chapter I - Offences against life and health

Life and health are protected primarily in this chapter, but because they are also at risk in the case of attacks directed primarily to other values, life and health are also protected in other chapters.

Criminal offences against life

The beginning of human life is considered to be the beginning of delivery, i.e. when the child's head or leading part appears. The end of life is a biological death of brain, which is demonstrated by

[3] *Section 7 of Act 418/2011 Coll.: 'For the purposes of this Act, criminal offences are the felonies and misdemeanours referred to in the Criminal Code, with the exception of crimes of manslaughter (Section 141 of the Criminal Code), murder of a newborn child by its mother (Section 142 of the Criminal Code), accessory to suicide (Section 144 of the Criminal Code), fight (Section 158 of the Criminal Code), intercourse among relatives (Section 188 of the Criminal Code), double marriage (Section 194 of the Criminal Code), abandoning a child or entrusted person (Section 195 of the Criminal Code), negligence of mandatory support (Section 196 of the Criminal Code), maltreatment of a person living in common residence (Section 199 of the Criminal Code), violation of regulations on economic competition rules (Section 248(2) of the Criminal Code), high treason (Section 309 of the Criminal Code), abuse of representation of state or international organisation (Section 315 of the Criminal Code), collaboration (Section 319 of the Criminal Code), war treason (Section 320 of the Criminal Code), service in foreign armed forces (Section 321 of the Criminal Code), freeing prisoners (Section 338 of the Criminal Code), violent crossing of state border (Section 339 of the Criminal Code), mutiny of prisoners (Section 344 of the Criminal Code), dangerous pursuing (Section 354 of the Criminal Code), insobriety (Section 360 of the Criminal Code), against conscription stipulated in the special section of chapter twelve of the Criminal Code and use of forbidden means and methods of combat (Section 411 of the Criminal Code)."*

irreversible stoppage of blood circulation and irreversible loss of function of the whole brain. An objective aspect of criminal offences against life is killing, which may also be caused by a failure to comply with a special obligation. A legal entity may commit a murder, for which intent and killing by negligence is required.

Criminal offences against health

This part protects human health, respectively the mental and physical function of the human body. The state of an individual before the offence, not the state of absolute health, is decisive for the assessment of bodily injury. The court shall decide on personal injury on the basis of expert opinions and medical reports. There are two forms of injury - severe injury to health (serious health failure, which corresponds to mutilation, damage to an important organ, inducing abortion, etc.) and injury, which is a health disorder or illness that makes the usual way of life difficult for at least 7 days. Furthermore, the criminal offences against health include, for example, failure to help, or spreading of an infectious disease.

5.2.2 Chapter II - Criminal offences against freedom

This chapter contains criminal offences against freedom, personal and privacy rights and confidentiality of correspondence. The objective aspect of these criminal offences comprises the various ways of exerting pressure on human will. It is, for example, violence, threat of violence, threat of other severe harm, or also, for example, dependence or distress. Criminal offences against freedom include restrictions on personal freedom, robbery, blackmailing, restriction of freedom of religion, defamation, etc.

5.2.3 Chapter III - Criminal offences against human dignity in the sexual sphere

Human dignity in general is the protected interest under this chapter. Criminal offences can be divided by object into three categories. These are criminal offences concerning freedom of decision-making in sexual relations, the healthy development of children and criminal offences concerning certain moral principles[4]. All sexual criminal offences require intent. These criminal offences include rape, sexual duress, solicitation, production and other handling of child pornography, etc.

5.2.4 Chapter IV - Criminal offences against family and children

The protection of family and children is guaranteed in international documents as well as in the Charter of Fundamental Rights and Freedoms. A family is an essential element of society and a child means a person under 18 years of age. The Act on Juvenile Criminal Procedure further subdivides the term “Juvenile” into children (up to 15 years of age) and young people (from 15 to 18 years of age). This chapter contains just a few criminal offences that a legal entity cannot commit by their very nature. This includes, for example, the criminal offence of double marriage, negligence of mandatory support or maltreatment of a person living in a common household. The criminal offences that a legal

[4] *In the case of natural persons, we make a distinction between a category that applies to certain principles in sexual relations (intercourse among relatives).*

entity can commit include the maltreatment of an entrusted person, serving alcohol to a child, etc.

5.2.5 Chapter V - Criminal offences against property

Criminal offences against property account for about 70% of registered criminal offences. The protected interests under this chapter comprise ownership, property as a whole or intangible property. However, the assets are also protected in other chapters.[5]

The subject of the attack is usually a thing, especially a thing of another. However, it may also be a controllable natural element (nuclear, electricity), live animals, financial funds in a bank account or book-entry securities.

The objective aspect of criminal offences against property distinguishes the extent of the effect as **damage not insignificant** (at least CZK 10,000), **damage not small** (at least CZK 50,000), **larger damage** (at least CZK 100,000), **substantial damage** (at least CZK 1,000,000) and **extensive damage** (at least CZK 10,000,000). The amount of damage shall be determined on the basis of the price at which the item is normally sold at the time and in the place of an offence. If the amount of damage cannot be ascertained in this way, the reasonably incurred costs of obtaining the same or similar thing or stating the thing in the previous condition shall be used. The decisive factor is determining how much the aggrieved party's property has decreased, not the enrichment of the offender.

We distinguish between four groups of property criminal offences. In the case of **enrichment criminal offences** such as theft or fraud, it is about obtaining material benefit. **Damage criminal offences** include, in particular, damage to a thing of another. Furthermore, **the furtum usus (unauthorised use)**, including but not limited to, unauthorised use of a thing of another or unauthorised interference with the right to a house, flat or non-residential premises. The last group of property criminal offences includes criminal offences such as participation or legitimisation of proceeds of crime that are related **to benefiting from the criminal activity of another person**.

5.2.6 Chapter VI - Economical criminal offences

Criminal offences in this chapter are divided into four parts, namely:

- criminal offences against currency and payment instruments,
- tax, fees and foreign currency criminal offences,
- crimes against mandatory rules of the market economy and circulation of goods in dealing with foreign state
- criminal offences against industrial rights and copyright.

In many cases, the standards of this chapter refer to regulation outside criminal law (norm outside criminal law), i.e., e.g. regulations governing business, trading, copyright or currency protection, etc. **The body** of criminal offences, which thus refers to another legal standard, is referred to as blanket. The extent of the criminal offence of socially harmful phenomena in the economic sphere is limited **by the subsidiarity of criminal repression**. This means that the criminal liability of the offender and the criminal consequences associated with it can **only be applied in cases which are socially harmful**,

[5] *E.g. criminal offences against environmental or economic criminal offences.*

in which the liability under another legal regulation is not sufficient.

It is in this chapter that the acceptable risk is applied more than elsewhere as a condition precluding illegality.

5.2.7 Chapter VII - Generally dangerous criminal acts

Generally dangerous criminal acts can be divided into publically menacing criminal acts and drug offences and include, for example, public menace, menace under influence of addictive substance or illegal armament.

Publically menacing criminal acts are fundamentally threatening criminal offences, resulting in a threat, i.e. a real possibility of a breakdown. The criminal nature often refers to a norm outside criminal law, such as a veterinary law, a law on weapons or a law on foodstuffs, when the perpetrator commits the criminal offence by violating that particular norm.

Drugs offences include, for example, the illegal manufacture and other handling of narcotic drugs and psychotropic substances and poisons, the illicit cultivation of plants containing narcotic drugs or psychotropic substances or the spread of drug addiction. In general, a wide range of criminal activities are generally associated with drugs. Besides the drug offences mentioned above, this includes the criminal activity committed under the influence of drugs or crimes associated with the use of illegally obtained financial funds from drug crimes.

5.2.8 Chapter VIII - Criminal offences against environment

Criminal offences against environment include, for example, environmental damage and hazard, damage to the water source, unauthorised waste disposal, maltreatment of animals or poaching. These criminal offences typically include a blanket body, referring to the Environmental Act. The specific object of this chapter is therefore an interest in protecting the environment and its individual components, which comprise an interest in protecting the ecological balance in nature, an interest in preserving all species of plants and animals, the protection of animals by preventing cruelty, protecting man from adverse effects of medicines, as well as an interest in maintaining waste management.

5.2.9 Chapter IX - Criminal offences against the Czech Republic, foreign states and international organisations

This chapter protects the interests of the Czech Republic against criminal offences against its constitutional establishment, security and defence power. Certain provisions also provide protection for a foreign state or international organisation. This chapter is divided into three parts: **criminal offences against the foundations of the republic** (e.g. subversion of the republic, terrorist attack, support and promotion of terrorism), **crimes against the security of the republic** (e.g. espionage, endangering classified information) and **crimes against the defence of the state** (breach of personal and material duty to defend the state).

5.2.10 Chapter X - Criminal offences against order in public matters

The criminal offences against order in public matters include, but are not limited to, violence against

public authority, violence against public official, abuse of competence of public official, acceptance of bribes, bribery, contempt of a court, obstruction of the execution of an official decision, unfair accusation, dangerous threats, defamation of a nation, race, ethnic or other groups of persons, incitement to crime, etc.

The protected interests of this chapter, therefore, include a number of social interests and values necessary for the proper functioning of the democratic rule-of-law state and the protection of the public.

5.2.11 Chapters XI and XII of the Criminal Code

Contain criminal offences against conscription and military criminal offences which, by their very nature, cannot be committed by a legal entity.

5.2.12 Chapter XIII - Criminal offences against humanity, peace and war crimes

The criminal offences include genocide, attacks against humanity, apartheid and discrimination against a group of people, contacts threatening peace, violations of international sanctions or, for example, abuses of a ceasefire.

This chapter constitutes the fulfilment of obligations under international agreements. This includes, in particular, a commitment to prosecute acts designated as crimes against humanity or war crimes, as well as, for example, obligations under the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment.

5.3 Sentence Types According to the Act on Criminal Liability of Legal Entities

The Act on Criminal Liability of Legal Entities lists in an exhaustive manner the types of sentences that can be imposed on a legal person[6]. Some sentences are the same as for natural persons and, on the contrary, certain specific types of penalties can only be imposed on a legal entity.

---

[6] *Section 15 (1) of Act No. 418/2011 Coll.*

"Only the following sentences can be imposed for a criminal offence committed by a legal entity

a) termination of the legal entity

b) forfeiture of property

c) pecuniary penalty

d) forfeiture of a thing

e) prohibition of activity

f) prohibition of keeping and breeding animals

g) prohibition of performance of public contracts or participation in tenders

h) prohibition of accepting subsidies and subventions

i) publishing a judgement."

5.3.1 Sentences That Can Be Imposed on Both Legal Entity and Natural Person

A pecuniary penalty may be imposed on a legal entity by a court where it sentences a legal entity for an intentional or negligent offence. The imposition of a pecuniary penalty must be without prejudice to the rights of the aggrieved person. This is a universal type of penalty and is based on a system of daily rates. The number of daily rates is derived from the severity of the offence and ranges from 20 to 730 daily rates. The amount of one rate is between CZK 1,000 and CZK 2,000,000. In determining the rate, the court shall take into account the assets of the legal entity.

The sentence of **forfeiture of a thing** shall be imposed by the court in respect of items which were used or intended to be used for committing a criminal offence. These may include weapons or instruments and apparatus, which facilitate criminal activity. Furthermore, the sentence of forfeiture may be imposed on things that are the proceeds of crime. The sentence may only be imposed if it concerns a thing belonging to the offender. The forfeited thing belongs to the State.

Penalty of **forfeiture of property** may be imposed on a legal entity if a particularly serious criminal offence has been committed in order to enrich itself or someone else, regardless of the fact that the act has been attempted or completed. This sentence may also be imposed on legal entities that are not based in the Czech Republic. If it is an institution subject to supervision by the Czech National Bank (banks, insurance companies, etc.), the court may impose this penalty only after its prior statement. The forfeiture of property affects all property of the legal entity or a part thereof as determined by the court.

The sentence of **prohibition of activity** may be imposed by a court on a legal entity for between one and twenty years if the criminal offence was committed in connection with that activity. The prohibition of activity is, by its nature, subsidiary to a sentence of prohibition of the performance of public contracts or participation in public tenders. This means that it applies only where it is not enough to impose these penalties only in order to fulfil the purpose of the sentence. If it is an institution subject to supervision by the Czech National Bank (banks, insurance companies, etc.), the court may impose this penalty only after its prior statement.

The prohibition of keeping and breeding animals is a form of sentence introduced in connection with the amendment of the Criminal Code of 2020. The sentence of prohibition of keeping and breeding animals is that the convict is prohibited to keep, breed and care for an animal for the duration of this sentence. This is a prohibition to keep and breed all animals, not just a specific mistreated animal or a particular animal species.

5.3.2 Sentences That Can Only Be Imposed on a Legal Entity

Termination of a legal entity is the most severe punishment that a court may impose on a legal entity with its registered office in the Czech Republic if its activities consisted wholly or mainly in committing criminal activities. The sentence of termination of a legal entity cannot be imposed if it is excluded by the nature of the legal entity. It cannot, therefore, be imposed, for example, on legal entities such as the Czech National Bank, the Czech Railways, public universities or municipalities, which are established by law and can, therefore, only be cancelled again by law. If it is an institution subject to supervision by the Czech National Bank (banks, insurance companies, etc.), the court may impose this penalty only after its prior statement.

The legal force of the decision imposing a sentence of termination of a legal entity shall put the legal

entity into liquidation. The claims of creditors may be satisfied from the property of a legal entity, which has been subject to a sentence of termination of a legal entity.

Prohibition of the performance of public contracts or participation in public tenders is a sentence designed to prevent and avoid committing further criminal activities. This sentence prohibits a legal entity from concluding contracts for the performance of public contracts, participating in public contract procedures or participating in tenders. This sentence may only be imposed on a legal entity that has committed a criminal offence in connection with the conclusion of contracts for the performance of a public contract or in connection with participation in a procurement procedure or a tendering procedure.

By **prohibiting the receipt of subsidies and subsidies**, the court prohibits a legal entity from applying for all grants, subsidies, repayable financial assistance, contributions or any other public support. This sentence may only be imposed on a legal entity who has committed an offence in connection with the receipt of grants or subsidies.

The purpose of **the publication of the judgement** is to make the public aware of the illegal action of the sentenced legal entity. In addition to the dishonouring effect, this sentence can also have a major impact on the property of the sentenced legal entity. The Court shall determine in the judgement the type of instrument in which the judgement is to be published, the scope of the publication and the time limit for publication of the judgement. The costs of publication shall be borne by the sentenced legal entity. The communication instrument, in which the judgement is to be published, may be national, regional or international. The judgement may be published in the press, radio and television broadcasting or in the media available on the Internet.

5.4 Protective Measures

A protective measure can be imposed for a criminal offence committed by a legal entity, in particular, detention of a thing or asset.

5.5 Related Acts

Act No. 40/2009 Coll., Criminal Code

Act No. 141/1961 Coll., on Criminal Procedure (Criminal Procedure Code)

Act No. 418/2011 Coll., on Criminal Liability of Legal Entities and Proceedings against Them

Act No. 218/2003 Coll., Act on Juvenile Criminal Procedure

Act No. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms

6 CONTRACTING PROCESS

The process of entering into agreement, i.e., contracting process is included in the substantive civil law. Substantive law governs the rights and obligations of the participants, whereas procedural law deals with the status and relations of the participants in the event of a dispute.

The contract is the most typical legal act in civil law and private law, in general. Contracts provide for significant transfers of various assets and non-property values.

The contracting process is currently regulated mainly in the Civil Code, which contains both general rules for the contractual process and special methods of contract conclusion. Some specific issues of the contracting process, such as the conclusion of contracts for the disposal of public funds, are covered by **the Public Procurement Act**. The modification of the contracting process with an international element is included in **the Vienna Convention on the International Sale of Goods**, which is described in the next chapter.

According to the legal theory, **the contract** is a bilateral or multilateral legal act, the establishment of which requires the same expression of the will of two or more contracting parties regarding the entire content of the contract, the substance of which is a consensus. The consensus is not only the identical will of the parties, but also the nature of the mutuality of the parties.

The contracting process is the procedure and sequence of certain steps leading to the conclusion of a contract. It is therefore a process that begins with the proposal to conclude a contract, continues with its acceptance and ends with the delivery of acceptance to the person who made the proposal.

A special institute in the field of contracting is **the contractual obligation**. This can be established in the Czech Republic only in certain cases, directly by law. An example is the contracting obligation in the field of insurance.

6.1 General Rules for the Contracting Process

6.1.1 Pre-Contractual Negotiations

Negotiation means negotiating of the future parties to the contract on the content thereof, namely the rights and obligations to which they intend to commit. Each party is allowed to express the will, the content of which is an attempt to enter into a contract and, with exceptions, the liability does not take effect if the contract is not concluded afterwards.

Pre-contractual liability

This exception is a situation, in which the negotiating party starts and continues the negotiations as if it wanted to conclude the contract, but there is no intention of concluding it. In such a case, it shall be liable for any damage. The damage compensation is also imposed for such conduct when a party, despite the progress made in the negotiations on the basis of which it is likely that a contract may be concluded, refuses it without any reason. This party is acting unfairly because it will close the negotiations without having a fair reason for doing so.

6.1.2 Proposal for Contract Conclusion

A proposal to conclude a contract is referred to as **an offer**. A legal act leading to the conclusion of a

contract is an offer if it contains the necessary particulars, which are

- proposer **(offerer) identification**
- indication of who the offer is addressed to, i.e. the addressee **(offeree)**,
- essential content, i.e. what the contract is to be about[7]
- contractual will, i.e. the will to be bound by the contract if the offer is accepted.

In connection with business activities, a proposal to enter into a contract also includes a manifestation of the will of the entrepreneur, who is not addressed to a person or persons, but who is intended for the public (offer by advertising).

6.1.3 Offer Acceptance

For the successful conclusion of the contract, it is necessary to accept the offer by the receiving party from the bidder that created it specifically for the entity. If an offer is accepted subject to a substantial reservation, a new offer must be made. In the event of minor changes, the offer can be deemed accepted subject to the condition that the offeror does not reject such acceptance without undue delay.

A bid is accepted if the offeree gives its consent in a timely manner. Even if the offeree has accepted the offer after the deadline, the acceptance has the same effect as if it had been received in a timely manner if the offeree orally notifies the other party of the acceptance (express acceptance) or starts to behave in accordance with the offer (implied acceptance), i.e., for example, if it accepts/provides the performance.

Silence or failure to act as such is not the acceptance of an offer. However, some laws stipulate that the party agrees, i.e. that the contract is concluded or amended even if no consent has been given. These include, for example, telephone operators or banks where the contract is changed, unless the customer, for example, disagrees within 2 months. The offer must therefore be explicitly rejected in this case.

Term for accepting the offer

The acceptance period is normally determined by the offeror in the offer. The term for accepting the offer commences upon the manifestation of the offeror's will containing the proposal for conclusion of the contract reaching the sphere of an addressee, e.g. mailbox.

If the term is not specified in the offer, the Civil Code specifies the supporting terms for offer acceptance. An offer made orally and offer submitted to **the present person in person**, by telephone or, for example, via an on-line communication platform in a written form, must be accepted **without undue delay**. An offer made in writing to **an absent person** may be accepted within a period adequate to the nature of the proposed contract and the speed of the instruments used by the proposer to send the offer.

Offer cancellation

If the offeror withdraws its manifestation of will, which has not yet become an offer, i.e. has not yet

[7] *The essential elements of the contract are defined by law and differ according to the contractual type.*

reached the disposition sphere of the addressee, it is deemed to be the offer cancellation.

Offer withdrawal

On the other hand, in the case of revocation, the manifestation of the offeror's will has already reached the disposal sphere of the addressee and thus became an offer. The offer shall be irrevocable, if expressly stated therein, if the parties so agree or if it results from negotiations between the parties to enter into a contract. An irrevocable offer may be withdrawn only if the withdrawal is brought to the attention of the other party before the latter has sent an acceptance of the offer.

Offer expiry

The offer shall expire upon refusal, by expiry in vain of the term for receipt of the offer, cancellation by the offeror or, in certain circumstances, death or loss of the legal capacity of either party. The offer **shall also expire upon acceptance when it becomes a part of the contract**.

6.1.4 Contract Conclusion

The contract is concluded at the moment when acceptance of the offer takes effect, i.e. upon acceptance reaching the disposition sphere of the offeror. **The form of the contract** itself does not need to be concluded in writing, although this form is required by the Civil Code for a few types of contracts (e.g. a contract on the sale of real estate). However, either party may express its will to enter into the contract in writing and it shall then be granted. Most contracts are contracts concluded orally and the number of contracts concluded in the Internet environment is increasing.

The remote conclusion of contracts is often enabled by **e-mail communication** which, however, is interpreted at the same level as regular paper mail. In the process of entering into a contract, the process described above becomes the process, during which the proposal to enter into a contract is sent via e-mail to the other party. When accepting the offer, the other party sends the accepted offer to the proposer, which thereby concludes the contract.

On the contrary, the offer of goods or services **on a website** often does not constitute a proposal to conclude a contract. It is usually a form that the candidate completes to become the proposer and sending the proposal for a contract conclusion to the provider of the website or the entity using the services of the website. The acceptance of the contract is then delivered to the e-mail box. The contract often refers to business terms and conditions.

6.2 Derogations from the Typical Method of Contract Conclusion

6.2.1 Regulation of Business to Business Contracts and Consumer Contracts

Generally speaking, we will find more flexible regulation in the Civil Code for concluding contracts between entrepreneurs and more formal regulation for concluding contracts with consumers. The need for different rules for entrepreneurs is based primarily on the presumption that entrepreneurs are professionals who regularly engage in similar obligations and therefore have a higher level of expertise and experience in this area and are subject to more stringent demands. Therefore, if two entrepreneurs act as professionals between them, there is no need for such protection as in the case of a consumer. On the contrary, it is the weaker party that must be protected extraordinarily.

6.2.2 Business Terms and Conditions

A part of the contract can be determined by reference to the business terms and conditions. Thanks to their general nature, it is possible to simplify the contracting process for entrepreneurs and, at the same time, to unify their content. However, the derogating provisions in the contract shall prevail over the business terms and conditions.

The business terms and conditions must be attached to the contract or otherwise demonstrably communicated to the other party by a reference. It is, therefore, not enough to simply make them available somewhere on the Internet or display them in the establishment. In the case of contracts in electronic form, any hyperlink shall be visibly placed and unambiguous to both parties. The condition of continuation of the purchase order can constitute just an approval of the consent to the business terms and conditions. **Therefore, the business terms and conditions shall become part of the contract when both parties have given their consent thereto.**

In the terms of the content of **the contractual terms and conditions**, the arrangements that the other party could not reasonably expect are ineffective. This is based on the assumption that the parties often do not read the business terms and conditions. Such an arrangement would, for example, be deemed to exclude the liability of one party in the event of a breach of contract. No account shall be taken of those provisions, which were presented in illegible or incomprehensible form either.

6.2.3 Adhesion (Standard Form) Contracts

An adhesion contract is any contract, the terms and conditions of which were determined only by one of the contracting parties or according to its instructions, without the weaker party having a real opportunity to influence the content of these basic terms and conditions. Thus, these agreements are not the result of negotiations between both parties on the contract content, but they will arise in such a way that one party submits a complete final text to the other party and the other party either agrees to or refuses to the terms and conditions (the “take-it-or-leave-it principle”).

Adhesion contracts include contracts where the contractual form used in the course of business or other similar instrument is used to conclude the contract. These are, therefore, also sales contracts concluded via e-shops.

6.3 Specific Contracting Methods

Special methods of entering into a contract are those that differ from the general regulation of the contracting process. The most frequent derogations from the normal contracting process include the participation of a third party, which does not become a contracting party, changes in the manner of submission of the bid and its acceptance, or the impact of the chosen form of the bid on the conclusion of the contract. The auction and the tender, under which the proposer actively seeks the best price, are the special methods of concluding a contract provided for in the Civil Code. Another special method is the public tender, which, unlike the standard offer, is intended for a non-specific group of addressees.

6.3.1 Auctions

As a general rule, an auction is a sale, in which the sold item is offered to the auctioneers who propose the price they are willing to pay for a thing. A tender already submitted shall be cancelled by

submitting a higher bid. The Civil Code considers the auction to be a contract concluded by bid-off.

6.3.2 Public Tender for the Best Bid

The contracting authority makes a call for tenders by posting the tender for the best bid to certain persons. The contracting authority shall Define the subject of the contract in writing at least in general. It shall specify the manner, in which tenders are to be submitted, the term for submitting the tenders and the term for announcing the winning tender. The contracting authority shall then publish the invitation in an appropriate manner (e.g. on the Internet). The persons submitting their bid in a specified manner shall be referred to as **bidders**.

After expiry of the term for submission of tenders, the contracting authority shall select the best bid. **The method of selecting a bid may or may not be determined by the contracting authority in the invitation to tender.** If this method is specified in advance, the contracting authority must select the most suitable bid in this way.

Acceptance of the most suitable tender shall be notified by the applicant within the term set by the applicant in the terms of the tender. The contracting authority must also, without undue delay, inform those bidders who did not succeed in the tender. The contracting authority shall also have **the right to reject** all enclosed bids, but only if so specified by the contracting authority in the tender terms and conditions.

The tender procedure for the best bid is similar to the public procurement process provided for in **the Public Procurement Act**. However, in the case of public procurement, public funds are disposed of and the whole process is, therefore, much more formalised for reasons of transparency.

6.3.3 Public Offer

It is a manifestation of the will of the proposer, by which it addresses unspecified persons with a certain proposal to conclude a contract. The proposer, therefore, prepares an offer, which must have the same essentials as a regular offer, but which will allow more persons to participate. Thus, the public offer differs from the typical offer as **it is not addressed to a particular person**.

In general, this method of entering into a contract is suitable in a situation where the proposer has a clear idea of the content of the contract, but does not have the other contracting party. At the same time, the contract needs to be concluded as soon as possible.[8]

Publication of a public offer is not expressly required by the Civil Code, but this fact arises from the nature of the case. Regarding the fact that it is not addressed to a particular person, it is necessary to publish it in order to allow the persons who could accept the offer to get acquainted with it.

As for **the revocation of the public offer**, the Civil Code only states that it may be revoked if the applicant publishes a revocation before accepting the public offer in the same manner as the public

[8] *However, the type of public tender is also advertising, even though it is regulated under the Civil Code in the general section on the contracting process.*

offer was published.

Any addressee of a public offer may accept the offer in the manner as specified in therein. **The contract is then concluded with the first person who first accepts the public offer.** If the offer is accepted by several persons at the same time, the proposer may choose with whom it will conclude the contract.

The proposer shall have the obligation to notify the successful party that the contract was concluded with. It shall do so without undue delay. They must also fulfil the notification obligation towards the unsuccessful bidders.

6.4 Related Acts

Act No. 89/2012 Coll., Civil Code

Act No. 134/2016 Coll., Public Procurement Act

Federal Ministry of Foreign Affairs Communication No. 160/1991 Coll., on the United Nations Convention on Contracts for the International Sale of Goods, as amended (Vienna Convention on the International Sale of Goods)

7 PURCHASE CONTRACT IN INTERNATIONAL TRADE

7.1 International Contracts in Private Law

The advantage of unified direct standards in the form of international contracts is that the complications with the application of conflict-of-law rules and national laws, which are often inappropriate for internationally based relationships, do not apply. The disadvantage is that they are relatively few and often contain discrepancies and gaps which, given the nature of the international contract, are even more difficult to eliminate than in the case of national rules. Government and non-governmental organisations, such as UNCITRAL[9], UNIDROIT[10], UNCTAD[11], UNIDO[12], etc. deal with the unification of legal standards.

The unified standards in the form of international contracts were successfully concluded, in particular, in two of the most frequent types of contractual relations that occur in international trade - the purchase of goods and contracts of carriage.

In general, in the case of international transport, it is not possible to derogate from a number of provisions of international contracts because they are aimed at protecting a transport user, which is a weaker party in these legal relationships. The international transport of goods is the subject of the following chapter. On the contrary, in the case of an international stipulation of a purchase contract, the availability of norms, from which it is possible to deviate, prevail and apply also when the parties do not negotiate certain attributes of the relationship.

7.2 Purchase Contract in International Trade

In international business relations, the purchase contract appears to be the most important contract type. An international purchase contract is defined as a commercial purchase contract, in which at least one party, having its registered seat or place of business or residence, participates in the territory of a country other than the other participants.

The Czech Republic is bound mainly by the United Nations Convention on Contracts for the International Sale of Goods (VIENNA CONVENTION) of 1980. On behalf of the Czech and Slovak Federal Republic, the Convention was signed in New York on 1 September 1981. The Convention became valid on 1 January 1988. It became valid for the Czech and Slovak Federal Republic on 1 April 1991.

The Vienna Convention regulates the content of the international sales contract and the contracting process. It specifies the essentials of the purchase contract, the conclusion of the purchase contract, the obligations of the buyer, the seller and the claims of either party in the event of a breach of obligations by the contracting parties. It is based on the principle of informality and most of its provisions are of a non-mandatory nature.

---

[9] *United Nations Commission on International Trade Law*

[10] *International Institute for Unification of Private Law*

[11] *United Nations Conference on Trade and Development*

[12] *United Nations Industrial Development Organization*

Contracts for the supply of goods to be manufactured or executed shall be deemed to be contracts for the purchase of goods unless the party ordering the goods undertakes to deliver a substantial part of the items necessary for their manufacture or production (then being a contract of work, which the Vienna Convention does not apply to). Further, in accordance with Article 23, the Vienna Convention does not apply to contracts, in which the predominant part of the obligations of the party supplying the goods consists in the performance of work or provision of services.

The purchase contract does not need to be concluded or demonstrated in writing and no other formal requirements are imposed. It may be demonstrated by any means, including witnesses. If it is in writing, it may also be a telegram or telex.

Since 2014, a new Civil Code has been in effect in the Czech Republic, which incorporated a number of provisions of the Vienna Convention. Therefore, a number of aspects of the sale and purchase of goods are currently unified and the Vienna Convention operates in the background of the Czech legal order.

7.3 Differences between the Vienna Convention and Civil Code

However, there are also differences concerning, for example, the amount and method of determining the default interest. In such a case, when the two regulations differ, it is necessary to stipulate the matter directly in a specific purchase contract, or to be aware of the fact that in the event of a dispute, the Vienna Convention[13] will apply if the area is regulated therein.

If a certain institute is not regulated in the Vienna Convention, the rules of (national) law applicable to the subject matter shall be determined in accordance with the rules of conflict of laws. The areas not covered by the Vienna Convention are established in a demonstrative manner. This concerns, for example, the question of the validity, effect of the contract on the ownership right or the liability of the seller for death or personal injury caused to any person.

The Vienna Convention does not regulate all international purchase contracts, either. Pursuant to Article 2 of the Convention, the following shall not apply to the purchase of the goods bought:

- for personal use, family or household use, unless the seller did not know and was not supposed to know before or at the time of conclusion of the contract that the goods were being purchased for such purpose;
- at auctions;
- in the execution of a decision or in accordance with a decision of a court;
- securities or money;
- ships, boats, hovercraft, aircraft;
- electricity.

7.4 Settlement of Disputes in International Trade

The best thing is to avoid disputes completely, which is not always possible. There are several ways of resolving disputes at an international level. The aim of conciliation is the settlement of disputes by

[13] *According to the Constitution of the Czech Republic (Art. 10), an international contract takes precedence over national law.*

agreement, without the exercise of public authority. The essential types of alternative dispute settlement include **mediation** and **negotiation**. Another stage is the settlement of disputes before a neutral arbitrator in the form of **an arbitration procedure**, or arbitration, which is very common in international trade. The last stage comprises conventional proceedings before general courts, which are sometimes referred to as **litigation**.

It is, therefore, appropriate not only to screen the business partner before the start of the contract preparation, but also to consider the choice of jurisdiction and the question of whether any disputes will be decided by a court or an arbitrator.

If the courts or arbitrators resolve a dispute arising from an international business transaction, they must first determine whether and when to apply the Vienna Convention, whether and when to apply the Civil Code (if the Czech law is the governing law) or whether and when to apply another norm. It is appropriate to proceed similarly with the preparation of the contract in order to make clear what regulation governs the contract or certain aspects thereof.

7.5 Related Acts

The United Nations Convention on Contracts for the International Sale of Goods (Vienna Convention) of 1980 (No. 160/1991 Coll.)

The United Nations Convention on the Limitation Period in the International Sale of Goods, 1974 (No. 123/1988 Coll.) and Protocol supplementing the United Nations Convention on the Limitation Period in the International Sale of Goods, 1980 (No. 161/1991 Coll.)

Act No. 89/2012 Coll., Civil Code

8 CONTRACTS OF CARRIAGE IN INTERNATIONAL AND CZECH LAW

As already mentioned in the previous chapter, the advantage of international agreements under private law is that the complications of the application of national laws, which are often inappropriate for these purposes, will be eliminated. In the case of goods transport, this is even more true.

International transport is governed mainly by the agreements described in the following sub-chapters. A number of provisions of these international agreements cannot be derogated from as they protect the transport users as a weaker party. However, this shall not apply, for example, to INCOTERMS or other rules and principles applied in international transport, which are binding only if the parties refer thereto.

8.1 International Carriage by Road

The Convention on the Contract for the International Carriage of Goods by Road (CMR) was signed in 1956 and has been in force in part for domestic road transport in the Czech Republic since January 2019. This Convention stipulates relations arising from contracts for the carriage of consignments by road for consideration where the place of receipt of the consignment and the estimated place of delivery are in two different countries, at least one of which is a contracting country of the Convention.

The CMR consignment note, which is issued in three copies (for the consignor, for the carrier, the third copy shall accompany the consignment) shall serve as a proof of the conclusion of the contract of carriage as well as of the acceptance of the consignment by the carrier.

The Convention also contains provisions on the liability of the carrier responsible for loss, damage during transport or exceeding of the delivery period. The carrier may release this liability if it proves that the loss of the consignment, its damage or the exceeding of the delivery period was caused by the entitled party's order and not by negligence of the carrier, by defect of the consignment itself or by circumstances, which could not be avoided by the carrier.

8.2 International Carriage by Rail

The Convention concerning International Carriage by Rail (COTIF) was signed in Bern in 1980 and ratified by the Czech Republic in 1985. This Convention allows the international carriage by rail to be effected as a single legal relationship under a single contract of carriage and a single transport document.

COTIF contains both uniform rules for contracts for the international carriage of passengers and luggage by rail (CIV) and uniform rules for contracts for the international carriage of goods by rail (CIM). In particular, it regulates the contract of carriage (tickets, luggage tickets), changes in the contract of carriage, responsibility of the railway, exercise of liability claims, the interrelationship between railways, transport obligations and others.

In the case of contracts for the carriage of passengers and baggage, the ticket and the luggage slip shall constitute transport documents. The railway is responsible for death, injury, total or partial loss or damage to a thing, but compensation for damage is limited by the maximum amount. A complaint must be lodged in writing and within the specified term. Pursuant to the Convention, a claim for damages shall be statute-barred after 3 years in case of death and injury, and after 1 year in case of other claims.

In the case of contract for the carriage of goods, the transport document shall be the bill of lading containing the required details. This document is the proof of the conclusion and content of the contract and of the acceptance of the goods by the carrier.

8.3 International Carriage by Air

A significant convention in the field of air transport comprises **the Montreal Convention for the Unification of Certain Rules for International Carriage by Air 1999**, which unites the rules on transport documents, and the obligations of the Parties in relation to the carriage of passengers, luggage and cargo. This Convention also sets out in detail the liability of the carrier and the extent of compensation, including jurisdiction. The regulation of damages shall be based on the liability of the carrier responsible for the death or injury of the passenger, destruction, damage, loss of luggage or cargo. Liability shall be limited by maximum fixed amounts, which may, however, be increased by contract.

The Montreal Convention replaces the so-called Warsaw System provided by the Warsaw and Guadalajara Conventions. In the relationship between the Czech Republic and the contracting countries, which have not yet ratified the Montreal Convention, **the Warsaw Convention of 1935** remains in force.

8.4 Carriage by Inland Waterway

The Budapest Convention on the Contract for the Carriage of Goods by Inland Waterway (CMNI) of 2000 is the first European regulation of national waterway transport. It shall apply to transport contracts where the port of loading or the place of the goods acceptance and the port of unloading or the place of delivery are situated in two different countries, at least one of which is a contracting country of the Budapest Convention.

8.5 Carriage by Sea

The Hague Rules on Bills of Lading 1924 was replaced by **the Hamburg Rules on Bills of Lading, signed in 1978 in Hamburg**. The Hamburg Rules are also referred to as **the United Nations Convention on the Carriage of Goods by Sea**.

In this case the transport document is the bill of lading, i.e. the consignment note, which represents the right of the carrier to issue the consignment taken over for transport to a person authorised under the document, which presents the bill of lading, confirming the receipt thereof there.

It applies to contracts between two different countries where the port of loading and unloading is in the territory of the country of Hamburg Convention, or the bill of lading issued in a contracting country provides that the contract is to be governed by the Hamburg Convention.

8.6 INCOTERMS

In order to facilitate international trade in the purchase and transport of goods, INCOTERMS were developed by the International Chamber of Commerce in Paris to overcome the differences between the different legal systems and eliminate the resulting uncertainty. INCOTERMS are binding on the contracting parties only if they are expressly referred to in their contractual relationship by using the word INCOTERMS. At the same time, it is necessary to specify the version (1980, 1990, 2000, 2010, 2020) as all versions are valid and applicable.

INCOTERMS are a comprehensive and interlinked system of rights and obligations. The terms regulate

how the seller fulfils its obligation to deliver goods, who pays the costs of transport or customs duties and many other issues. The application of INCOTERMS, therefore, means an agreement on a number of provisions, but not all of them - for example, they do not provide for the transfer of title. These matters must be regulated separately in the contract. The parties are entitled to modify or exclude the individual rights and obligations under INCOTERMS, but these interventions in the definition of clauses shall always be considered carefully. The latest version of the Incoterms of 2020 contains 11 terms, which are divided into two main groups according to the mode of transport, into clauses suitable for any mode of transport and those for maritime transport and inland waterways.

8.7 Contract of Carriage in the Czech System of Law

The contract of carriage is laid down in the Civil Code and can be divided into a contract of carriage of persons, a contract of carriage of goods and a contract of operation of a means of transport. In erms of commercial law, the contract of carriage of goods is particularly relevant.

The regulation in the Civil Code is only general; there is always a Code of Carriage established for the individual modes (of transport), which is governed by the relevant Decree of the Ministry of Transport on the Code of Carriage for Public Railways and Carriage of Passengers by Road. In the case of transport relations containing an international element, the above-mentioned international contracts of carriage shall apply.

8.7.1 Contract for Carriage of Goods

In the case of a contract for the carriage of goods, there is **the carrier** that has the obligation to transport the consignment from the place of departure to the place of destination with due care and at an agreed time and **the consignor** that has the obligation to pay the transport charge and to provide the carrier with information about the content of the consignment. The third party to the contract of carriage shall be **the consignee** that acquires the rights under the contract against the carrier (in particular, the right to issue the consignment or damage compensation) once it has requested the consignment to be issued when it reached the destination or the specified term of delivery has expired. The issue of a consignment may be subject to the collection of a certain amount from the consignee (“cash on delivery”).

The consignor shall be the “consignment master” throughout the transport - it may interrupt the transport at any time and may, for example, hire another consignee. In such a case, the carrier shall reimburse the costs reasonably incurred.

The carrier has a priority right of lien on the consignment in order to secure its debts under the contract. If the person entitled to do so fails to collect the consignment within 6 months, the carrier may sell the goods. The money then belongs to an authorised person. If the consignment is damaged during transport, although the carrier could have prevented it, the carrier shall compensate the damage. The contract must not contain any provision, in which the carrier waives its liability for damage. However, the rights to damage compensation must be exercised within 6 months as of the date of receipt of the consignment or within 6 months as of the date when it should have been delivered.

Accepting the consignment, the consignee shall become the guarantor of the consignor for the receivables of the carrier.

8.8 Forwarding Contract in the Czech System of Law

The contract of carriage is often confused with the forwarding contract. However, the forwarding contract represents an obligation **to procure the transport of the goods, not to transport the goods**. The fundamental difference is that the consigner is not liable for damage caused to the goods during transport.

The legal regulation of the forwarding contract is also laid down in the Civil Code. Under the forwarding contract, **the forwarder** agrees to arrange for **the principal** to transport the consignment in its own name and in its own account from a certain location to another location, or to arrange for or perform transport-related operations (e.g. packaging, loading, storage) and the principal undertakes to pay the respective remuneration.

The principal shall provide the necessary and correct information about the content of the consignment, to pay remuneration to the forwarder, to compensate the purposefully spent costs and to give instructions to the forwarder. The obligation of the forwarder is to arrange for the transport of the consignment and determine the method and route of transport with due care.

8.9 Related Acts

The Convention on the Contract for International Carriage of Goods by Road (CMR) 1956 (No.11/1975 Coll.)

The Convention concerning International Carriage by Rail (COTIF) 1980 (No. 8/1985 Coll.)

The Convention for the Unification of Certain Rules Relating for International Carriage by Air (MONTREAL CONVENTION) 1999 (No 123/2003 Coll.)

The Convention on the Contract for the Carriage of Goods by Inland Waterway (BUDAPEST CONVENTION - CMNI) of 2000 (No 32/2006 Coll.)

The United Nations Convention on the Carriage of Goods by Sea (HAMBURG CONSENT RULES), 1978 (No 193/1996 Coll.)

International Commercial Terms

Act No. 89/2012 Coll., Civil Code

9 PUBLIC CONTRACTS

Public procurement is stipulated in Act No. 134/2016 Coll., on Public Procurement.

The public contract as such is not defined by law, but the law stipulates when a public contract is to be awarded. The public contract can then be defined as a supply, service or works contract that is awarded under the Public Procurement Act.

Awarding a public contract means the conclusion of a contract for consideration between the contracting authority and the supplier, which implies the obligation of the supplier to provide precisely the supplies, services or construction works. Therefore, if the subject of the contract was performance free of charge, the Public Procurement Act would not apply. Similarly, this Act would not apply if the contracting authority was to provide the supplies, services or construction works. The Act also does not consider the award of a public contract to be, for example, the conclusion of a contract establishing an employment relationship or another similar relationship.

The main purpose of public procurement is to ensure competition in the award of a public contract between different suppliers **with the aim of efficient spending of public funds**.

9.1 Public Procurement Principles

In the procedure under the Public Procurement Act, the contracting authority must respect the principle of transparency and proportionality and, in relation to suppliers, the principle of equal treatment and the principle of non-discrimination.

The principle of transparency means ensuring the maximum possible transparency of the procurement process, which will subsequently allow the control of the individual steps of the contracting authority. **The principle of proportionality** is observed if the tender conditions and procedure are duly adapted to the subject, complexity and amount of the expected value of the contract. **The principle of equal treatment and principle of non-discrimination** assume setting of the tender conditions equally for all suppliers when none of the suppliers can receive an advantage or disadvantage during the tender period.

The relationships with suppliers are also governed by **the principle of restriction of participation in the tender** only to those suppliers that have their headquarters in a member state of the European Union, the European Economic Area or the Swiss Confederation, or another state, which has signed an international agreement with the Czech Republic or the European Union guaranteeing the suppliers from such states to participate in the subject public contract.

9.2 Public Contracts by Subject

According to the subject, we divide the public contracts into public contracts for supplies, services and construction works.

A public contract for supplies means a public contract, the subject of which is the acquisition of things, animals or controllable natural elements. Acquisition means, in particular, purchase, rental or lease. The subject of the public contract for supply may also be provision of services, such as the putting into service of the goods in question. However, those activities may not be an essential purpose of the public contract, but only be a necessary complement thereto.

Public contracts for service are defined negatively. This is the provision of activities other than those covered by the construction works.

The public contract for construction works is a public contract, the subject of which includes construction works and the provision of activities, construction or provision of related project activities, provided they are awarded together with such construction works. The construction is then defined as the result of assembly or construction works forming a single unit, which in itself is sufficient to perform a technical or economic function.

The Public Procurement Act also regulates **the sectoral contract** awarded by the contracting authority in the performance of activities related, for example, to the supply of gas, water, thermal energy, etc.

9.3 Public Contracts by Estimated Value

The contracting authority shall determine the estimated value of the public contract before the commencement of the tender procedure.

According to the estimated value, public contracts are divided into small-scale public contracts, public contracts below threshold and public contracts above threshold.

A small-scale public contract is a public contract whose estimated value in the case of a public contract for supply or service is equal to or less than CZK 2,000,000 and in the case of a public contract for construction work is equal to or less than CZK 6,000,000.

When awarding a small-scale public contract, there is no need to proceed in accordance with the Act; however, the above-mentioned principles of public procurement must be observed.

A public contract below threshold is a public contract whose estimated value is below the limit of the public contract above threshold and exceeds the limits of the small-scale public contract.

A public contract above threshold is a public contract whose estimated value is equal to or exceeds the financial limit set by the Government Decree No. 172/2016 Coll. on setting financial limits and amounts for the purposes of the Public Procurement Act, as amended.[14]

9.4 Public Contract Entities

The contracting authority is the party awarding the contract. The law distinguishes between the contracting authority, subsidised contracting authority, sectoral contracting authority and voluntary contracting authority.

The contracting authority is the Czech Republic, the organisational unit of the state, the Czech National Bank, state-contribution organisations, territorial self-government units or their contribution organisations and other legal entities, if they have been established or established for the purpose of meeting the needs of the public interest and are not of an industrial or commercial nature. **The subsidised contracting authority** is a person/entity, legal or natural, who awards a public contract above or below threshold, 50% or more of which is financed from public funds, or if the funds provided for the public contract from these sources exceed CZK 200,000,000. **The sectoral contracting authority** is the contracting authority, which awards the sectoral public contract under

---

[14] *As from 1 January 2020, the financial limit amounts to CZK 3,568,964 for public contract for supply and service above threshold and CZK 137,366,600 for public contract for construction works above threshold. These limits, including the conversion into national currencies, are set by the European Commission, which has done so after two years in this case.*

the conditions laid down by law. **The voluntary contracting authority** shall be any other person who commences the procurement procedure without having an obligation to do so. However, in the case of a public contract thus awarded, it is obliged to follow the procedure laid down by law.

Contractor means a person who offers the provision of supplies, services or construction works. **Participant in the tender procedure** is the supplier who submitted the bid or a request for participation, expressed a preliminary interest or entered into negotiations. **Successful contractor** is then a participant in the tender procedure selected by the contracting authority to conclude the contract. Another (third) party, through which the contractor provides part of the performance to the customer, is called **a subcontractor**. If the contracting authority wishes to know the specific subcontractors, it may require in the tender documentation that the participant in the tender procedure submits a list of subcontractors and specifies which part of the public contract is to be performed by each of the subcontractors. The contracting authority may even reserve the right to make payments directly to a subcontractor.

Complainant is referred to as the contractor that objects to the contracting authority because it is at risk of or harmed by the procedure for the award of the public contract. **Submitter** is then such a complainant who filed a motion to initiate proceedings to examine the contracting authority's tasks to the Office for the Protection of Competition (ÚOHS), which may occur if its objection has not been complied with.

Communication between the contracting authority and contractors (participants) in the tender procedure and in special procedures takes place in writing. Unless expressly excluded by law, oral communication may also be used if the content is sufficiently documented.

9.5 Types of Tender Procedure

The law distinguishes a total of 9 types of procurement procedures, namely simplified below-threshold procedure, open procedure, restricted procedure, negotiated procedure with publication, negotiated procedure without publication, competitive dialogue procedure, innovation partnership procedure, concession procedure and contract award procedure under simplified regime.

According to the subject and the amount of the estimated value of the public contract (see above), the law specifies what public contract and under what conditions it is necessary to award in any of the above procurement procedures.

For the award of a public contract under **the below-threshold regime**, the contracting authority may apply *a simplified below-threshold procedure*, with the exception of a public contract for construction works. For this, the estimated value must not exceed CZK 50,000,000 even if its maximum below-threshold value is more than twice as high (see footnote on the previous page). The contracting authority may also award the below-threshold contract in some kind of tender procedure intended for the above-threshold regime, in which case some conditions that otherwise apply to the above-threshold regime shall not apply.

For the award of a public contract in **an above-threshold regime**, the contracting authority may use **an open procedure or a restricted procedure without publication, a competitive dialogue procedure or an innovation partnership procedure**.

9.5.1 Simplified Below-Threshold Procedure

The contracting authority initiates a simplified below-threshold procedure by publishing a call for

tenders on the contracting authority's profile using the specified form to be sent to the Public Procurement Journal and which calls for an unlimited number of suppliers to submit a tender bid. The invitation must remain on the contracting authority's profile until the end of the tender bid submission term. The contracting authority may, after publication, send the invitation directly to certain contractors. in this case, the invitation must be sent to at least 5 contractors.

9.5.2 Open Procedure

The contracting authority shall initiate an open procedure by sending the initiated tender notice for publication using a specified form to be sent to the Public Procurement Journal and the Official Journal of the European Union. This notice calls for an unlimited number of contractors to submit a tender bid. Contractors shall submit evidence of qualifications specified in the tender bid. The contracting authority shall provide a term for submission of tender bids in the open procedure within 30 days as of the tender commencement date. However, this term may be extended or shortened under the conditions laid down in the Public Procurement Act.

9.5.3 Restricted Procedure

Like in the case of an open procedure, the contracting authority shall initiate an open procedure by the tender opening notice to be sent to the Public Procurement Journal and the Official Journal of the European Union. This type differs from the open procedure in the way the contractor is chosen. Upon request of the contractors to Participate, the contracting authority subsequently selects candidates who meet the qualification requirements and only invites them to submit a tender bid. No other tender bid may be submitted.

9.5.4 Negotiated Procedure with Publication

The essence of the negotiated procedure with publication is that the contracting authority negotiates the contractual terms and conditions only with one or more contractors. In principle, a negotiated procedure with publication shall be admissible only if the contracting authority has unsuccessfully attempted to award the contract in a simplified below-threshold procedure, open procedure, restricted procedure or competitive dialogue. An exception shall be made for a sectoral contracting authority, which may award the above-threshold contract in this way without having to use a different type of procurement procedure prior to that procedure.

The contracting authority shall open the negotiated procedure with publication by the tender opening procedure to be sent to the Public Procurement Journal and the Official Journal of the European Union. This calls for an unlimited number of contractors to submit an application for participation. Subsequently, the contracting authority shall exclude from the participation in the tender the participants who have not demonstrated compliance with the qualification requirements and shall invite the non-excluded bidders to submit preliminary tender bids. The contracting authority then discusses with the candidates the final form of the tender bid, whereas the candidates may modify it during the negotiations. The contracting authority then calls for tender bid submission by the bidders.

9.5.5 Negotiated Procedure without Publication

The contracting authority may apply the negotiated procedure without publication in three cases. The public contract has already been issued in an open, restricted or simplified below-threshold procedure, but no tender bids were submitted for it, or tender bids or participants did not comply with the tender conditions. Another situation is when the public contract can be performed by a single contractor, because the subject of performance is a unique work or performance, because competition is absent for technical reasons or because it is necessary to protect the contracting authority's exclusive rights. The third possibility where a negotiated procedure without publication may be applied is that an urgent circumstance, which the contracting entity could not have foreseen and did not cause requires the Performance of the contract as quickly as possible and the time limit for the open procedure, the restricted procedure or the negotiated procedure with publication, cannot be met.

The contracting authority shall initiate the negotiated procedure without publication by sending a call for negotiations, a call for tenders or the opening of negotiations with the contractor. In this way, it addresses a limited number of candidates. The contracting authority shall not have the right to modify the tender terms and conditions during the course of negotiations.

9.5.6 Competition Dialogue Procedure

This type of procurement procedure is intended for particularly complex public contracts and it is actually applied rarely. The essence of the competitive dialogue is to allow the award of a public contract, for which the contracting authority does not have clear ideas about the manner of its performance and in the context of the competitive dialogue seeks a suitable solution together with the contractor(s). Following an invitation to an unlimited number of participants through the Public Procurement Journal and the Official Journal of the European Union, the contracting authority shall exclude those participants whose application for participation does not comply with the procurement procedure and shall invite the participants not excluded to participate in the competitive dialogue. The contracting authority then conducts a competitive dialogue with the participants in order to find a solution capable of meeting the contracting authority's needs. After finding a suitable solution, the candidates are invited to submit their bids and then the contracting authority selects the best bid.

9.5.7 Innovation Partnership Procedure

he innovation partnership procedure is a type of procedure that the contracting authority is entitled to apply in cases where the contracting authority needs the development of an innovative supply, service or works and their subsequent purchase and acquisition. This includes such performances that cannot be satisfied through solutions that are available in the market. Following an invitation to an unlimited number of participants through the Public Procurement Journal and the Official Journal of the European Union, the contracting authority shall exclude participants whose application for participation does not comply with the procurement procedure and shall invite the participants to deliver their preliminary bids. The contracting authority negotiates about the preliminary bids with the participants with the aim to improve the preliminary bids in favour of the contracting authority. The contracting authority may subsequently decide to establish an innovation partnership with one or more partners to carry out research and development activities separately.

9.6 Related Acts

Act No. 134/2016 Coll., Public Procurement Act

Government Decree No. 335/2019 Coll., Government Decree amending Government Decree No. 172/2016 Coll., on setting financial limits and amounts for the purposes of the Public Procurement Act, as amended by Government Decree No. 471/2017 Coll

10 PUBLIC CONTRACTS II

10.1 The Course of Tender Procedure

The contracting authority shall award the public contract in one of the types of tender procedures. As mentioned above, the choice of the tender type is mainly affected by the type of contracting authority, the subject of the public contract and the estimated price of the public contract. In general, an open and restricted procedure can almost always be used in the terms of the law, whereas, for example, very strict conditions are already laid down by law for the use of a negotiated procedure without publication.

10.1.1 Invitations to Tender

Once the contracting authority has chosen the type of tender procedure, it shall be followed by the opening of the procedure by the tender opening notice, which shall be published. Here, the contracting authority specifies in detail the subject of the public contract and the process of the tender procedure.

In the invitation, the contracting authority shall define, in addition to the contracting authority information, the subject of the public contract performance, including

- time and place of the public contract performance
- requirements for demonstrating compliance with the tender qualifications
- the time of the inspection of the place of performance of the public contract or the inspection of the documentation
- tender bid evaluation method
- requirements for the unified method of pricing the tender bid
- place and time for submission of tender bids and other tender terms (e.g. for questions)
- time and place of opening the envelopes with tender bids
- other specifics of the public contract

The invitation to tender is often accompanied by the tender documentation, which specifies the subject of the public contract in details. The participant in the tender procedure may ask the contracting authority for an explanation of the tender documentation.

10.1.2 Determination of Qualification Requirements

By proving the qualification compliance, the participant demonstrates to the Contracting Authority the fact that it is competent to perform the subject of the contract, whereas it must be fulfilled by each contractor applying for the public contract.

10.1.3 Setting the Tender Bid Submission Term

The minimum term for the submission of tender bids or requests to participate is always specified in the specific tender procedures. The Public Procurement Act sets out the terms according to whether it is an above-threshold or below-threshold tender bid and, in some cases, it also sets different terms based on the type of public contract, i.e. whether it is a public contract for supplies, services or construction works.

The terms stipulated by law are only minimal and may be extended by the contracting authority. The contracting authority shall specify the terms in the tender procedure with regard to the complexity of the individual tasks and should take into account the time necessary for processing and submission of tender bids by the participants. All terms shall commence always on the day following the tender opening date.

10.1.4 Determination of the Tender Bid Submission Method

Contractors shall submit their tender bids in a written or electronic form. In case of delivery after the tender bid submission deadline, the tender bid will not be opened and will be returned to the sender. Every bidder may only submit one tender bid.

10.1.5 Determination of Tender Bid Evaluation Method

The tender bid is always evaluated in the manner specified by the contracting authority in the tender conditions. Thus, the contracting authority must determine the evaluation criterion, the tender bid evaluation method in the individual criteria and the mathematical relationship between the criteria (e.g. the mutual weight of the individual criteria). Pursuant to the Public Procurement Act, the contracting authority is entitled to evaluate the tender bids based on their economic advantage according to

- tender bid price
- lowest life cycle costs
- the most appropriate tender bid price/quality ratio of the subject performance
- most appropriate life cycle cost/quality ratio
- quality in the case of fixed prices of the public contract performance by the contracting authority.

The participant whose tender bid was evaluated as the most economically efficient by the contracting authority must be selected by the contracting authority for conclusion of a contract for the performance of the public contract. After the evaluation of the tender bids, the contracting authority shall prepare a report on the evaluation of the tender bids, the details of which are specified by law.

10.1.6 Issue of Decision on the Best Tender Bid Selection

Immediately after the winner has been selected, the contracting authority makes a decision on the selection of the most suitable tender bid. The contracting authority shall communicate the award notice to all tender participants within a specified time limit. The contracting authority shall indicate in the notice the details of both the contracting authority and the public contract, as well as those of the winner of the tender procedure. It also includes a justification for the selection according to the valid conditions stated in the tender documentation.

10.1.7 Lodging Objections to the Contracting Authority

After the delivery of the notice of the best tender bid selection, the contracting authority shall provide all bidders with time to object to the contracting authority's decision. The 15-day term for objecting shall begin on the date of delivery of the notice of the best tender bid selection to the

individual bidders. The contracting authority may also request the participants to waive their right to object and thus speed up the process.

Objections may be raised not only against the selection of the best tender bid but also, for example, against the tender terms and conditions or against any other alleged infringement. In the first case, this must be done at the latest by the end of the term for tender bid submission, the second within 15 days as of the day on which the complainant became aware of the alleged infringement.

A contracting authority shall, within 15 days, send a statement on objections where it either complies with the objections and indicates the measures taken, such as the revocation of the decision concerned or the carrying out of a new evaluation. It may also reject the objections, which must be explained in a detailed and comprehensible manner. It is always necessary to comment on all the objections raised.

10.1.8 Contract Conclusion

In the event that no objection is received by the contracting authority within the objection submission term, the contracting authority may sign the contract with the selected bidder. After its conclusion, the contracting authority shall prepare a notice on the outcome of the tender procedure and publish it in the Public Procurement Journal, on the profile of the contracting authority and in the Official Journal of the European Union in the case of above-threshold contracts.

The contract cannot be concluded at a time when objections can be raised and when the decision on such objections is pending. If the objections have already been settled by the contracting authority, the contract cannot be concluded until the time when the application may be lodged with the Office for the Protection of Competition or the proceedings before that office are already under way.

10.2 Protection against Improper Approach from the Contracting Authority

Compliance with the rules applicable to awarding of public contracts is supervised over by the Office for the Protection of Competition.

When exercising such supervision, the Office shall decide whether the contracting authority acted in accordance with the law in the process of awarding a public contract or shall impose corrective measures.

The procedure for reviewing the contracting authority's actions shall be initiated upon a written proposal from the complainant or ex officio. It may be a proposal or an initiative.

The submission of a proposal is subject to prior lodging of an objection with the contracting authority. A proposal may be filed against any and all acts and omissions of the contracting authority which are not in accordance with the Public Procurement Act and which result in actual or imminent harm to the rights of the participant. The proposal may be filed within 10 days of the date, on which the complainant received a decision rejecting the objections. If the contracting authority has not decided, the proposal may be submitted within 25 days as of the date, on which it was sent by the complainant. Along with the submission of the proposal, the proposer shall pay a deposit to the account of the supervisory authority in the amount of 1% of the tender bid price of the proposer, at least CZK 50,000, whereas the maximum amount is CZK 10 million.

The proposal must be delivered to the Office for the Protection of Competition with a copy to the contracting authority. The contracting authority shall then deliver its response to the received

proposal to the Office, whereas along with the statement, the contracting authority shall also send the tender documentation.

The Office may initiate proceedings ex officio where **an initiative** has been brought. Any entity, i.e. a natural person or legal entity, contractor or individual, may initiate an administrative proceeding to examine the contracting authority's actions. This includes, in particular, persons who were not authorised to submit substantiated objections to the contracting authority during the tender or offer-bidding procedure and who have information about violation of the law. However, the lodging of an initiative shall not automatically open an administrative procedure ex officio. The submission of the initiative is not associated with any administrative charge.

The Office for the Protection of Competition shall decide in one of the following ways:

- cease the procedure
- cancel the tender procedure or the contested act of the contracting authority
- revoke the decision on objections
- prohibit the continuation of the contested procedure
- prohibit the conclusion of a contract in the tender procedure
- prohibit of the contract performance
- refuse the proposal

In the event of a breach of obligations laid down by the Public Procurement Act, fines may be imposed, the amount of which shall also be determined by this Act.

Serious violation of binding rules of the procurement procedure falls within the area of criminal law. The Criminal Code ranks breaches of public procurement regulations (Section 256, Section 257) among the economic criminal offences, namely criminal offences against binding rules of the market economy and the circulation of goods in contact with abroad (Section 3 of Chapter VI).

10.3 Related Acts

Act No. 134/2016 Coll., Public Procurement Act

Government Decree No. 335/2019 Coll., Government Decree amending Government Decree No. 172/2016 Coll., on setting financial limits and amounts for the purposes of the Public Procurement Act, as amended by Government Decree No. 471/2017 Coll

Act No. 500/2004 Coll., Administrative Procedure Code, as amended

Act No. 40/2009 Coll., Criminal Code

11 UNFAIR COMPETITION

11.1 Protection of Competition as a Whole

Competition is not defined by law in detail. However, it can be seen as an attempt by operators in a particular market for goods or services to obtain certain advantages over others, particularly in the area of operating results. The competition may take place on the supply and demand side and may have both a positive function and a negative function. A positive function is, for example, better quality of goods or a lower price for the customer. On the contrary, a negative function may be an attempt by competitors to limit or exclude competition or to sell low-quality low-cost goods.

In particular, **the public law** instruments are used to protect competition, as they protect the public interest, i.e. **competition as such**. In the field of public protection of competition, the existence of the Office for the Protection of Competition (the "Office"), which regulates open market business, is essential. Its powers include, for example, prohibiting of agreements that restrict competition or authorising of mergers. The Office does not deal with **the private part** of the protection of competition comprising **the law protecting the individual competitors against unfair competition**.

The fundamental difference between unfair competition and restriction of competition is, therefore, the fact that **unfair competition** takes place **within economic competition** and usually consists in obtaining an unjustified advantage over other competitors by those who have engaged in unfair competition. On the contrary, **the illegal restriction of competition contravenes the competition as such** and it most often comprises the exclusion of certain competitors from competition as a result of the competitive power of another competitor. This may take the form of agreements already mentioned, which distort competition, abuse of the dominant position of competitors or certain concentrations of competitors. It is also referred to as cartel and antitrust law.

However, the public and private parts of the protection of competition often overlap in practice and thus protect competition as a whole.

The competition legislation is particularly extensive thanks to the Czech Republic's membership in the European Union. A number of EU regulations and directives and vast judicature of the Court of Justice of the European Union apply to competition. The basic sources of legal regulations in the area of restriction of competition in the Czech Republic include Act No. 143/2001 Coll., on the protection of competition and Act No. 262/2017 Coll., on the compensation of damage in the area of competition, as well as Act No. 89/2012 Coll., the Civil Code, regulating unfair competition, which is the main subject of this chapter.

11.2 Unfair Competition

Unfair competition is, according to the Civil Code, a situation that occurs if the competitor acts in conflict with good manners of competition and such conduct may cause harm to other competitors or customers. A competitor is a competition participant, which may or may not be an entrepreneur. These conditions constitute **the general clause** and must be fulfilled simultaneously in order to satisfy the constituent element of unfair competition. The aforementioned good morals are not defined by law and the court decides whether they have been violated on an individual basis. The general clause also stipulates that unfair competition does not necessarily cause harm. It is a threat offence and the constituent element is thus fulfilled even if the harm is imminent.

The Civil Code further provides a non-exhaustive list of unfair competition activities, but besides

these activities, there are a number of others, which will be considered unfair only on the basis of the aforementioned general clause.

The unfair competition acts explicitly listed in the Civil Code include misleading advertising, misleading labelling of goods and services, causing a risk of confusion, free-riding with respect to the enterprise's reputation, product or services of another competitor, bribery, trivialisation, comparative advertising, unless allowed as admissible, violation of a trade secret, intrusive harassment and endangering health and the environment.

11.2.1 Misleading Advertising

Misleading advertising is advertising that is related to business or profession and which misleads or is capable of misleading persons and thus is likely **to affect their economic behaviour**. Therefore, it uses false or misleading information in order to increase the sales of goods or a service.

When assessing the misleading advertising, account shall be taken of all of its **distinctive features** and data contained in the advertising relating to

- availability, nature, execution, composition, manufacturing process, date of manufacture or provision, eligibility for the intended purpose, applicability, quantity, geographical or commercial origin, as well as a more detailed list and other characteristics of the goods or services, including the expected results of use or results and significant characteristics of the tests or verifications carried out;
- price and pricing method;
- conditions, under which the goods or services are supplied or provided; and
- nature, characteristics and rights of the advertiser, such as, in particular, their identity, property, professional competence, their intellectual property rights or honours.

Even a correct detail may be misleading if it can mislead in terms of the circumstances and context of the disclosure thereof; The assessment of misleading shall also take into account the added terms such as ‘kind’, ‘type’, ‘method’, and of omissions, abbreviations and overall illustration.

11.2.2 Misleading Labelling of Goods or Services

Misleading labelling of goods or services is such labelling, which is likely to cause economic relations in the mistaken belief that it identifies the goods or services that originate from a particular region or place or from a particular manufacturer, or that show a particular characteristic or a particular quality. Misleading may also be caused by an indication generally used in economic relations or quality if it is accompanied by an expression fit to mislead, such as ‘genuine’, ‘real’ or ‘original’.

It is not important whether the indication was given directly on the goods or in any other manner.

As with misleading advertising, in the case of misleading labelling, **even correct information itself may have the ability to mislead** if it is likely to mislead with regard to the circumstances and context. And here, additions and the use of terms such as ‘kind’, ‘type’ or ‘method’ shall be taken into account.

11.2.3 Comparative Advertising

Comparative advertising directly or **indirectly identifies a competitor or its goods or services**. Not all comparative advertising is prohibited because comparison is the substance of most advertisements.

It is important to fulfil the conditions of the general clause.

Comparative advertising is permissible in the following cases defined by law:

- if it is not misleading;
- if it compares only goods or services, which satisfy the same needs or are intended for the same purpose;
- when it compares objectively one or more essential, relevant, verifiable and characteristic characteristics of the goods or services, including price;
- when comparing goods with a designation of origin only with goods of the same designation;
- to the extent that it does not facilitate competitors, their position, their activity or their results, or the labelling thereof, or in an unfair manner, and
- where it does not offer the goods or services as imitations or reproductions of the goods or services bearing the trademark or name of the competitor.

11.2.4 Causing a Risk of Confusion

A risk of confusion is caused by a person who **uses the name of the person** or special identification of the enterprise used by another competitor. It may also be a specific **designation of the company product, performance or commercial material**, which in the customer circles apply to a particular company, such as the identification of packaging, forms, catalogues or advertising material.

The risk of confusion will also be caused by those who **imitate a product of another, its packaging or performance**. The risk of confusion does not exist in the case of imitation of elements, which are already from the nature of the product functionally, technically or aesthetically pre-determined, and the imitator has taken all possible measures required to eliminate or at least significantly reduce the risk of confusion.

11.2.5 Free-Riding with Respect to Reputation

Free-riding with respect to reputation is understood as **misuse of the reputation of a product, plant or service** of another competitor in order to obtain benefits for its own business that a competitor would not have achieved in other circumstances.

11.2.6 Bribery

Bribery has 2 partial facts of constituent element designated as active and passive bribery.

Active bribery is the conduct, by which a competitor to a person who is a member of the statutory or other body of another competitor or who is in an employment relationship therewith, offers, promises or provides any benefit for that in order to obtain for themselves or another competitor, by unfair procedure, priority or another unjustified advantage in competition.

If the person referred to in the preceding paragraph requests, promises or accepts, directly or indirectly, any benefit for the same purpose, this is **passive bribery**.

11.2.7 Trivialising

Trivialising is a behaviour, by which the competitor **mentions or discloses incorrect information**

about the position, performances or product of another competitor that is capable of causing harm to the competitor.

Trivialising is also the **provision and disclosure of true information** about the situation, performances or product of another competitor if it is able to cause harm to that competitor. However, unfair competition is not the case if the competitor was forced into such conduct by circumstances and, therefore, used legitimate defence.

11.2.8 Trade Secret Violation

A trade secret violation is an act, **by which an acting person discloses or makes available a trade secret to another person or uses it for himself or for another person**.

An acting person could have become aware of this secret by disclosure or becoming otherwise accessible on the basis of employment, another relationship or in the performance of an office, to which they have been summoned by a court or another authority. The second option is that the secret was obtained by conduct of an acting person or another person contrary to the law.

11.2.9 Intrusive Harassment

Intrusive harassment is the communication of data of competitors, goods or services, as well as the offer of goods or services by telephone, fax, electronic mail or similar means, **although the recipient is obviously not interested**.

Intrusive harassment is also the communication of advertisement, in which the originator conceals or hides the information according to which it can be identified, and does not indicate where the recipient can, without special cost, demand that the advertising be terminated. However, if the advertisement is sent to an e-mail address obtained by the entrepreneur in connection with the sale of the goods or the provision of the service, it is not a perceptible harassment if the entrepreneur uses this address for direct advertising of his products and the other party has not prohibited advertising. However, when obtaining an address and when using it for advertising, the entrepreneur shall clearly indicate the right to claim the termination of the advertising without special cost.

11.2.10 Health or Environmental Hazards

It concerns acting, by which a competitor, to the detriment of health or the environment, has benefited himself or someone else.

11.3 Protection against Unfair Competition

11.3.1 Abstention or Elimination Faulty Condition

A person whose right has been endangered or violated by unfair competition may request the violator to abstain from such unfair competition or to remedy the faulty state. This may also be required by **a legal entity** entitled to defend the interests of competitors or customers, unless it concerns free-riding with respect to reputation, bribery, trivialisation or violation of trade secrets. However, the consumer is also entitled to request the violator to refrain from unfair competition or to remedy a harmful situation. In this case, the burden of proof is reversed. Thus, the violator

demonstrates that unfair competition has not been committed.

11.3.2 Reasonable Satisfaction, Damage Compensation, Unjustified Enrichment

Further, **a person whose right has been compromised or violated by unfair competition** may claim adequate satisfaction, compensation for damage or surrender of unjust enrichment. If **the consumer** exercises the right to compensation, the infringer must prove that the damage was not caused by unfair competition.

11.4 Unfair Competition and Criminal Law

The Criminal Code ranks infringements of competition rules among economic criminal offences, namely criminal offences against binding rules of the market economy and the circulation of goods in contact with abroad (Section 3 of Chapter VI). However, it does not directly define the concept of unfair competition, and it is, therefore, necessary to base it on a general definition in the Civil Code at a criminal level.

The violation of regulations on rules of economic competition is committed by someone who violates legislation on unfair competition by false advertising; false labelling of goods and services; causing the danger of confusion; exploiting the reputation of an enterprise, product or service of another competitor; bribery; demeaning; comparative advertising; breaching a trade secret; or endangering the health of consumers and the environment, thus causing a great deal of detriment to other competitors and consumers; or by gaining a wide range of unearned benefits for themselves or others. Thus, the offender of this criminal offence by their unfair competition activities have caused harm or have obtained unjustified benefits of to a large extent and may be **punished by a maximum of three years of imprisonment, by prohibition of activity or by forfeiture of things**.

In this case, any harm, which may be of both a property nature and non-property nature shall be considered to be harm, for example, in the event of damage to the reputation of the competitor, its reputation, the credibility of its business or a reduction in the quality of its products. Therefore, the term harm is more relevant than damage in this provision.

At the same time, **it must be actual infliction of harm** that is one of the conceptual attributes of the criminal offence of violation of the competition rules. This concept must be distinguished from the regulation contained in the Civil Code where it is sufficient that there is an objective risk of harm taking into account all the circumstances.

11.5 Related Acts

Act No. 89/2012 Coll., Civil Code

Act No 143/2001 Coll., on the Protection of Competition

Act No 262/2017 Coll., on Compensation for Damages in the Field of Competition

Act No 40/2009 Coll., Criminal Code

12 BILLS OF EXCHANGE AND CHEQUES

In the case of continental law of exchange and law of cheques, the international unification was also performed on the basis of the Geneva Conventions which, however, were not acceded to by Anglo-American countries. These are the Geneva Exchange Conventions (1930) and Geneva Cheque Conventions (1931). In 1950, the Czechoslovak Exchange and Cheque Act adopted this regulation (No. 191/1950 Coll.)

12.1 Bills of Exchange

A bill of exchange is a security issued either in series or in name. The bill of exchange ranks among the abstract securities, which means that they do not need a legal reason (cause) for their creation and stand alone.[15]

A bill of exchange has the function of payment and security. The owner may sell the bill before the due date, whereas the bill substitutes cash. However, the bill of exchange can be applied even after the obligation on the basis of the original commitment has not been fulfilled and then serves as a security for the monetary obligation.

12.1.1 Types of Bills of Exchange

The basic types of bills of exchange are regular bills of exchange and promissory notes. A special type of bill is a blank bill of exchange.

Regular bill of exchange assumes at least three bills of exchange participants, such as the issuer (the bill issuer), the remittor (the person whose order or name a bill is issued to) and the drawee (the person that is required to pay).

The regular bill of exchange contains an indication that it is a bill, an unconditional order to pay a certain amount, the name of the person who is to pay (drawee), the amount due and the place where it is to be paid, the name of the person to whom or in whose order it is to be paid, the date and place of issue of the bill and the issuer's signature.

A statement that it is the bill of exchange is part of the actual text of the document and is in the same language as the bill. **Unconditional order** means that it does not contain any condition. Should any condition be included here, the bill would be invalid. The amount agreed may be indicated in figures or in words or in both ways[16]. **A name** is sufficient for identification of the drawee, but the residence or birth certificate number may also be provided. In the case of the place where the payment is to be made, the name of the municipality shall be sufficient.

A promissory note has two parties to the bill exchange, namely the issuer (issuer of the bill of exchange) and the remittor (the person whose order or name the bill is issued to). The difference

---

[15] *However, it can be contractually agreed that the debtor will bear the burden of proof and will therefore demonstrate the reason for the bill commitment.*

[16] *If the amounts are inconsistent, the amount written in words shall prevail. If different amounts are stated on the bill in the same way, the lower amount applies.*

compared to the regular bill of exchange lies in the fact that the issuer itself undertakes to pay the bill.

The promissory note should contain the same details as a regular bill of exchange, i.e. an indication that it is a bill, an unconditional promise to pay a certain amount, an indication of the due date and place where the bill is to be paid, whose name and order it is to be paid to, the date and place of issue of the bill and the issuer's signature. Given that the issuer itself undertakes to pay it, the name of the person who is to pay it (drawee) is no longer included in it.

A special case of the bill is **the blank bill of exchange**. The blank bill of exchange contains blank fields, which will be completed later and then the blank bill of exchange shall become a bill of exchange. For the creation of the blank bill of exchange, the right to complete must be agreed to, which is the procedure by which the acquirer shall complete the missing particulars. This right to complete is agreed, for example, in the purchase contract or credit agreement, i.e. outside the blank bill of exchange as such.

12.1.2 Maturity of Bill of Exchange

he maturity of the bill may be determined in four different ways, namely on sight, for a certain period of time after the sight, for a certain period of time after the date of issue or on a particular day. Bills of exchange with a different maturity or with a gradual maturity are invalid.

If the bill of exchange does not contain any maturity, the bill shall be **payable on sight**. In such a case, the express debtor shall pay as soon as the creditor submits the bill to him for payment and shall be prepared to do so at any time. Another option is that the bill will indicate, for example, "For this bill, I will pay in one month after sight.[17]" , i.e. , **a certain time after sight**. In both of the above cases, it is legally valid that the bill must be submitted within one calendar year as of the date of issue. However, this is a non-mandatory provision and the deadline can be extended and shortened, which must be indicated directly on the bill.

The certain period of time after the date of issue may take the form of, for example, ''on Good Friday 2021'' or ''the first Sunday in April 2021'', or **a certain date**, such as ''26 April 2021''. The maturity of the bill must, therefore, fall on a specific day of the year. If the bill states, for example, "pay for the bill by 26 April 2021", the bill has several days of maturity, which makes it invalid[18].

12.1.3 Bill Endorsement

The endorsement is intended **for transfer of the bill**. It appears on the back (reverse) side of the bill when the endorser transfers the rights from the bill to the endorsee (new holder). Thus, the endorsement contains a number of data, names and signatures of the endorsement, as they followed in time when the bill was assigned to other holders. The obligation to pay remains mandatory, however, anyone who has passed the bill is written on the reverse of the bill and becomes the

---

[17] *According to the Law of Exchange and Cheques, a month shall be deemed to be 30 days, so the bill becomes due 30 days after submission for payment.*

[18] *The reason for invalidity may also be a non-existing date (31 February 2021).*

guarantor of this bill in relation to other (not the previous) holders.

Endorsement is only possible for bills of exchange on order, i.e. for each bill where the “not on order” clause is not provided. If the bill contains this clause, it cannot be transferred by endorsement. Such bill may only be transferred by assignment (cession).

12.1.4 Aval

The aval can be used to secure the debtor's obligation and, therefore, it is **a form of security**. It is established by a written declaration and signature of the guarantor on the bill of exchange or in an appendix. The guarantor of the bill is always a third party and is called the bill guarantee, aval, or aval guarantor. The participant they stand security for shall be referred to as an avalee (secured debtor).

Contrary to normal security, the accessory principle does not fully apply to aval. Therefore, the bill holder does not have the obligation to request the payment from the debtor first and only then from the guarantor. The avalor is, therefore, bound by the bill as well as the person they have stood security for.[19]

12.1.5 Bill Confirmation

Confirmation is for the debtor that the bill has been paid. The bill holder shall identify it on the bill.

12.1.6 Interest Clause - Bearing Interest

The bill as such is **generally not expected to bear interest**. The principal may only bear interest upon endorsement. Interest is acceptable only in the case of a bill where the maturity is set on sight or at a certain time after sight. For such maturity determined, neither the issuer nor the bill holder can precisely determine when the bill will become due. No interest is acceptable for the bill due on a certain date. In the case of such an issued bill, the bill holder and the issuer know exactly when the bill will be due and can, therefore, additionally calculate the interest and determine the total amount as the bill principal.

12.1.7 Bill of Exchange Procedure

If the bill is not paid in due time, it usually results in a bill of exchange procedure which is regulated in the Act No. 99/1963 Coll., Civil Procedure Code. The bill of exchange procedure can be divided into two main parts.

The first concerns the issue of a bill of exchange order and is, by its very nature, a documentary procedure. The second part concerns the possible examination of objections under the judicial proceedings when the decision to revoke or maintain of the bill payment order is taken. This part shall be initiated by lodging timely and substantiated objections against the bill payment by the

---

[19] *Where a guarantor stands security for a direct drawee, it shall become a direct debtor. If they stand security for a person who is an indirect debtor, the guarantor shall become an indirect debtor.*

defendant.

The bill payment order shall be issued by the Regional Court if an outstanding bill is submitted to them, the authenticity of which is indisputable. The bill holder, submitting a valid bill of exchange, is not required to prove anything other than that he is the owner of the bill. A condition for issuing the bill payment order is, in addition to submitting the original bill by the owner (the plaintiff), the express proposal for the bill payment order to be issued.

Where the conditions for issuing the bill payment order are fulfilled, the court shall issue it and require the defendant to **pay the required amount and the procedural costs within 15 days, or to lodge, within the same term, objections**, specifying everything they object to the order of payment. The bill payment order must always be delivered to the defendant's own hands.

12.2 Cheques

A cheque is a debt security and is, in particular, a payment instrument. Compared to the bill of exchange, it is essentially intended for immediate payments and is, therefore, of a short-term nature. Its essential feature is ‘‘an unconditional order to a certain person to pay a certain amount of money.’’ This definition implies that the cheque is similar, in particular, to the foreign bill of exchange.

The legislation for bills of exchange and cheques in the law of exchange and law of cheque is almost identical and some institutes apply both of these securities equally. Like the bill, the cheque may be issued in the form of a security to name or Order. However, unlike the bills of exchange, a cheque can also be issued in the form of bearer security.

The cheque must contain an indication cheque that is incorporated in the document text, the name of person to pay (payer), place where the payment is to be made, the date and place of issue and signature of the issuer. The indication of the person to whom the payment is to be made is irrelevant.

12.2.1 Cheque Types

Cheques can be broken down according to the issuer of the cheque to bank and private cheques. **A bank cheque** is issued by the bank that manages the financial assets of the person who requested the cheque to be issued. **A private cheque** is not issued by a bank, but by a private person and the bank acts only in the role of the payer. The issuer shall issue a private cheque, incurring a receivable from the bank in question, which shall then pay the authorised person a given amount of money.

A document shall become a cheque once it contains all the required details. Until then, it may take the form of **a blank cheque**. The process of issuing it and the required details are similar to the bill of exchange.

A traveller’s cheque is a special type of cheque, which has been created primarily for the purposes of international tourism. The use of this cheque consists in the possibility of bringing funds to countries that apply a ban on the import of cash in certain currencies.

A gift cheque is an alternative to a traveller’s cheque. It mostly takes the form of a cheque with a nominal value paid by the donating party. However, it must not be confused with a gift voucher for purchase in a particular shop, which does not contain the required details as for a cheque and is only a marketing instrument, but not a cheque.

12.2.2 Maturity

All valid cheques are payable on sight, i.e. at the time of their submission to the payer. Cheques must be presented within the presentation period, which is 8 days for the cheques issued and due in one country. If the places of issue and maturity are in different countries, this period shall be 20 days. In the case of intercontinental cheques, this term shall be 70 days.

12.3 Related Acts

Act No. 191/1950 Coll., the Bills of Exchange and Cheques Act

Act No 99/1963 Coll., Code of Civil Procedure